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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 UNITED STATES OF AMERICA, : 15-CR-637(KAM)
5 Plaintiff, :
6 -against- : United States Courthouse
7 EVAN GREEBEL, : Brooklyn, New York
8 Defendant. : November 17, 2017
9 : 9:00 o'clock a.m.
10 - - - - - X

11 TRANSCRIPT OF TRIAL
12 BEFORE THE HONORABLE KIYO A. MATSUMOTO
13 UNITED STATES DISTRICT JUDGE, and a jury.

14 APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

CMH

OCR

RMR

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1 (In open court; outside the presence of the jury.)

2 THE COURT: Let's go on the record.

3 I have Juror Number Two.

4 Please, sit in the witness stand.

5 As you know, this is Juror Number Two and she is had
6 a conversation with her boss and I think it is important for
7 the parties to hear what the outcome of the conversation was.
8 So, if there are additional questions, we can ask her.

9 Ms. Cruz, if you don't mind, please tell us the
10 nature of the conversation and what your views are as a result
11 of that conversation.

12 THE JUROR: To be honest, I didn't have a verbal
13 conversation with him. We communicated by e-mail.

14 THE COURT: Okay.

15 THE JUROR: Basically, the e-mail was letting me
16 know that he was surprised to hear from you as far as the
17 extension and the trial being extended. He expressed that it
18 would interfere with the flow of the practice and that he
19 felt -- I'm trying to remember verbatim what he might have
20 said, but something to the effect of the Judge mentioned that
21 you may be able to be dismissed from the case. So, my
22 response was I have spent a lot of time here already, I would
23 like to see it through and that as far as I knew, coverage in
24 the office was going well. So he asked me to call him last
25 night and I thought about it and I didn't know if -- I just

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1 decided not to speak to him because I was really confused on
2 what to do and I told him that I would speak to you today. I
3 sent him a text that I would speak to you today.

4 THE COURT: All right.

5 Just to be clear for the record, what I told the
6 doctor is that, he asked me what would happen if she no longer
7 is in the case, if she quits the jury. I said she can't
8 really just quit the jury. When a juror tells me that they
9 may not get paid, that is something that I would convey to the
10 parties and it would not be just my decision, I would have to
11 evaluate the juror's situation, I said I would be very mindful
12 of his situation and I would also hear from the lawyers before
13 deciding. He said, Well, would the trial just stop? And I
14 said, No, we do have alternates for that very reason.

15 That's probably what he's discussing, but I said the
16 dismissal is not something that anyone makes unilaterally.
17 It's a very deliberate, careful thought that we give based on
18 input from everybody who may be affected by this decision.

19 So, he did not say for sure that he was not going to
20 pay you, but he did say it was a terrible financial hardship.
21 I don't know what he told you about your status with regard to
22 being paid going forward or for the past, you know, few weeks.

23 THE JUROR: Well, he has continued to be very vague
24 about it and what I mean by that is when I initially mentioned
25 to him that I had been called for jury duty, we were here

1 during selection and I -- I do the payroll. I did put through
2 to be paid and I indicated that I would give him the hours
3 back. That's a practice that, you know, that's something that
4 we do in the practice where someone can work back the hours so
5 they're not hurt financially by having to take excessive time
6 off like that.

7 So, when I was chosen, what I decided to do was to
8 discuss it with him and he did not want to commit to making an
9 arrangement with me so I decided to -- those first few weeks,
10 we did have a few days off. I worked those days and I gave
11 myself one additional day of pay. So I, at least -- I work
12 four days a week. I would at least have half a salary. And
13 he indicated to me, you know, whatever, whatever you want to
14 do, whatever you're comfortable with, you do what's best for
15 you. So I thought, okay, that's something that I can do.

16 I can manage with at least half my salary being able
17 to work a Saturday if we have a full week here and so far,
18 that is what I've been doing, but even as far as his e-mail
19 last night, he still just was, again, very vague and said, you
20 know, whatever you're comfortable doing as far as how I was
21 calculating the hours, you know, that I would work something
22 out with you. I don't consider you just an employee but
23 family but I just still have no answer.

24 He's just been very, very vague. So it puts me in a
25 situation where I never wanted to assume that I would receive

1 full pay and just work something out with him because I didn't
2 want him to think that I was abusing, you know, my position
3 with him. And for him to say, oh, you know, she doesn't
4 really care how long she's going to be there, she's getting
5 paid, I wanted to be very careful with that.

6 So, again, he's just been very vague. He's not
7 committing to anything. Though he says he's open to whatever
8 I am comfortable doing, I don't want to cross the line either
9 where I feel I'm going to owe him 200 hours that I would take
10 forever to work back, but I was willing to still try to manage
11 with the full time. That would have been less time for me to
12 owe him. And then in the future, we have those few days off
13 that you indicated and I thought that was an option for me to
14 be able to stay and complete this, but I am just left feeling
15 with those questions he asked you, you know, and I just want
16 to be honest, I just feel that the door has been opened to the
17 possibility that I could be dismissed and -- he may think that
18 I'm just avoiding that option.

19 THE COURT: All right.

20 Does anyone have any questions? Mr. Dubin?

21 MR. DUBIN: Yes.

22 The last thing we want to do is put you in a
23 position where you feel, you know, stuck between choosing this
24 and being in fear of, you know, losing your job.

25 So, do you feel -- I'm just trying to listen to you

1 and read your concern and, you know, being very mindful of it.
2 Are you concerned about that?

3 THE JUROR: I'm not concerned about losing my job,
4 no.

5 THE COURT: I will say that he did assure me that
6 she would not lose her job.

7 MR. DUBIN: Okay. Good.

8 THE COURT: Yes.

9 MR. DUBIN: And I guess the only other question that
10 I have is we also don't want to, I think I speak for everyone
11 but nobody wants to put you in a position that it's such a
12 financial hardship that you're feeling like being here is
13 making it so difficult on you financially.

14 So are you able to manage if you were to remain?

15 THE JUROR: I think we could if we had that deadline
16 for sure. I know that that's not something you can, you know,
17 say for sure. I understand that.

18 MR. DUBIN: Okay.

19 THE JUROR: But I thought about that on my way here
20 today, I said, you know, I also risk that if it goes past
21 that, he -- you know, I may suffer the wrath of whatever. You
22 know, he, he'll be very upset.

23 MR. DUBIN: Understood.

24 THE JUROR: And, you know, it's a hard decision for
25 me.

1 MR. DUBIN: Right. I mean, do you think that it
2 would be something that you wanted to think about over the
3 weekend and get back to the Judge about? We'd be fine with at
4 that and I'm sure Your Honor would talk, maybe have a
5 conversation with your boss and then get back to us.

6 THE JUROR: Okay. Well, after spoken with the Judge
7 this morning and getting a little bit more of the conversation
8 that took place with him, it did make me want to rethink a
9 little bit on having a conversation with him now that I have
10 all the information.

11 THE COURT: My sense from your boss was that he
12 would like to have an actual conversation versus maybe an
13 e-mail to really talk about it. You know, I told him it was
14 the latest and it was the best news I had and it was the first
15 news I had about a December 15th ending.

16 So, he seemed dismayed, I mean, he seemed
17 disappointed, but he also said, I've never had a call from a
18 judge before, is this out of the ordinary? I said, Well, you
19 know, I'm doing this because the parties suggested it and we
20 also have concerns as to whether Ms. Cruz will continue to be
21 paid. And he didn't commit to me either whether he would, but
22 he said he would have to have a conversation with you in order
23 to reach a decision.

24 So, that's why I encourage you to speak to him, but
25 the notion of the alternatives arose when he said, What if I

1 just tell her she has to come back and she's gone? And I
2 said, Well, dismissal is something that is not just at the,
3 you know, it's not necessarily a decision that anyone makes
4 unilaterally. It's a very difficult decision and one that we
5 consider carefully.

6 So, I think that at this point, it would be best, as
7 Mr. Dubin suggests, that you speak with your boss and really
8 find out what he's willing to do for you given the kind of
9 arrangement that you have with trying to make up days. I did
10 tell him we were off the trial on the 24th, which is a Friday,
11 and Wednesday, Thursday and Friday, the 29th, 30th and 1st.

12 So, I would just encourage you to have an actual
13 conversation and decide what you think is best and let us know
14 on Monday.

15 THE JUROR: Okay. Okay.

16 THE COURT: All right. Thank you. And please don't
17 discuss this with your fellow jurors.

18 THE JUROR: No. No.

19 THE COURT: All right. Thank you. So we will let
20 you go back there. Thank you very much.

21 (Juror exits.)

22 THE COURT: Let me just bring you up to date, have a
23 seat, on Juror Number Two.

24 She told me she is a single mom and the sole
25 breadwinner in her family. She works, as you may recall, at

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1 the Hospital for Special Surgery. She was told that she has
2 four weeks of pay. What she does is she's going to work the
3 Friday after Thanksgiving, she's going to work this weekend
4 and next weekend, and she's going to work the 29th, 30th and
5 31st. She said she's got prescheduled days, but she's trying
6 to make up time so that she doesn't lose pay but she would
7 like me to call.

8 I have tried to call on successive days during
9 breaks the compensation person there. I've just gotten his
10 voicemail and I am reluctant to leave this type of a
11 voicemail. So I am going to try to reach out for someone
12 above his, his level and see if I can speak to him. He is
13 only in today, this other individual, the head, and I'll try
14 to reach him during a break or, you know, even if, if all the
15 jurors aren't here, I can try now, but she is concerned about
16 the financial responsibilities she has and the possibility
17 that her pay, even with trying to juggle extra shifts -- she's
18 working 24/7 basically, you know, at the Hospital and here
19 giving attention and trying to manage her family.

20 So, that is her situation.

21 MR. DUBIN: Your Honor, we just wanted to, on behalf
22 of Mr. Greebel, express from us, thank you Your Honor for the
23 attention you're paying to this and the care you're giving it
24 because it's important and we really do appreciate it.

25 THE COURT: Obviously, we have concern for everybody

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1 in this trial and everybody who is involved and I don't want
2 the jurors to be distracted by the stress, but I do appreciate
3 the parties finally giving me a date, you know, and so that
4 will give us some guideline as to what we might be able to
5 tell employers when I have to make these calls.

6 So, is there anything else that anyone wants me to
7 raise with either the jurors or the employers who come
8 forward?

9 MR. PITLUCK: Judge, is there still -- there was an
10 alternate who was talking about a vacation next week. Is that
11 still a pressing issue?

12 THE COURT: I don't know. She had indicated -- I'll
13 tell you what she said recently to Ms. Jackson is, I might be
14 able to arrange things but don't tell anyone yet because I
15 don't know if I can. So we haven't heard anything more from
16 her. This is Juror Number 16. So, I am assuming she is here
17 until she tells us otherwise.

18 MR. PITLUCK: Okay. Thank you.

19 THE COURT: Thanks. All right. So, if all the
20 jurors are here, let me know. If not, I'll try to make a call
21 to Juror Number One's employer.

22 Are the parties ready to proceed?

23 MR. MASTRO: Yes, Your Honor.

24 MR. PITLUCK: Judge, just with regard to
25 Ms. Oremland, I don't know what the Judge is considering or

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1 how the Judge, how the Court would like to proceed, but we, we
2 were talking internally about it last night and I think as we
3 expressed repeatedly, we don't intend for Ms. Oremland to
4 offer what is traditionally expert opinion and I think perhaps
5 the terminology of the question might be what's, or the answer
6 might be what's kind of weighing on the Court's mind.

7 I think what we would propose is to just make things
8 not even in the gray area. Instead of asking Ms. Oremland the
9 purpose of specific rules, which we do think she's certainly
10 qualified to talk about, we would ask her what role they play
11 in her analysis of the market and what role they play in the
12 market generally and why they're important to her analysis
13 which is certainly not a legal opinion. It's certainly not an
14 opinion underlying the, you know, creation of the rule, but
15 it's her opinion, it's her testimony about how they play a
16 role in the market and her analysis.

17 THE COURT: Well, not in this case though.

18 MR. PITLUCK: No, of course not, not in this case,
19 just generally. And, you know, because we're -- while we
20 certainly think she's an expert, and we intend to qualify her
21 as such consistent with the Court's order --

22 THE COURT: Juror Number Two wants to come back in.
23 So, we can either do that now. Would you like to do this now?

24 MR. PITLUCK: Let's do this now.

25 THE COURT: And then I'll continue but I'm hearing

1 you. So sorry about the interruption.

2 MR. PITLUCK: No, that's okay. She wants to come
3 back in?

4 THE COURT: She wants to come back in and talk to us
5 further.

6 You can bring her in. She did tell me -- come on
7 in.

8 (Juror enters.)

9 THE COURT: Juror Number Two is back in the
10 courtroom.

11 Have a seat, please. Yes, ma'am.

12 THE JUROR: I do apologize. I do not want to take
13 up any more time.

14 I just can't take a chance with any backlash that I
15 may go through.

16 THE COURT: So. Are you --

17 THE JUROR: I would ask if I can be dismissed. If
18 you will discuss it, if you need to discuss it, I, I just --
19 I'm so torn and this is something that I have to go back to,
20 this is an employer that I still have to see, and I know him
21 and I know from the questions he asked, he would want me to
22 maybe take the opportunity to be dismissed.

23 I know that might not be a valid reason or maybe it
24 is. I don't know. I can't say it would be a hardship because
25 I know that I could manage if I need to, but I, I just feel

1 I'm in a spot where he knows that there's the opportunity.

2 THE COURT: All right. Well, why don't I ask you to
3 return to the jury room. Again, please don't mention this. I
4 will discuss this with counsel and we will bring you back in
5 with a decision.

6 THE JUROR: Okay.

7 THE COURT: Okay? Thank you.

8 THE JUROR: Thank you. I apologize.

9 THE COURT: Were there any other questions that
10 anybody wanted to ask?

11 All right. Thank you.

12 THE JUROR: Thank you.

13 (Juror exits.)

14 THE COURT: Have a seat.

15 What I started to say as she was coming in was she
16 told me that last night, she didn't sleep and she's just been
17 in agony and she just doesn't know what to do because she said
18 she definitely wants to stay, she feels that she's invested a
19 lot of time, she finds the case interesting, but she's just
20 not sure what her boss are do.

21 So, I would leave this up to you. You have been
22 able to get a glimpse of her and I think I had like to hear
23 from the parties as to how they would like to proceed.

24 MR. DUBIN: Your Honor, if I may, what I'm
25 struggling with and I think the defense team is struggling

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1 with is she's so thoughtful. We've been watching her
2 throughout the trial. She's been taking notes and she's one
3 of the jurors who is paying real close attention so it's a
4 real shame.

5 I think that what we're hearing, and I'm being so
6 mindful of the fact that we never want to put someone in a
7 position where they feel they might lose their job because of
8 jury service --

9 THE COURT: I don't think she will. I really don't
10 think she will because, one, her employer said to me, I would
11 never think about terminating her. He referred to her in the
12 same terms. He said she is like family and, in fact, she is
13 family. So I don't know what that's about, but he assured me
14 he would not terminate her.

15 MR. DUBIN: What I was just -- because I heard that
16 earlier too and what I was just hearing from her is that she's
17 concerned about what she called backlash. Maybe it just would
18 take the assurance that she is not going to be terminated.
19 That was why I suggested maybe it would be useful to speak to
20 her employer and get that reassurance that, look, this, the
21 situation is not optimal, but I'm not going to fire you, and
22 if maybe she heard from Your Honor that he expressed that he
23 is not going to terminate her, she might feel like, you know,
24 a little bit more comfortable about at least having the
25 conversation over the weekend because, like I said, even

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1 watching her, she just seems like she feels awful about having
2 to leave after having invested this much time.

3 So, we would just ask that, Your Honor, we would
4 just ask if Your Honor wouldn't mind just calling her back in
5 and/or if you want to do it in private and explaining her --

6 THE COURT: I have told her that at least twice.

7 MR. DUBIN: Okay.

8 THE COURT: Yes. After my conversation when I said
9 please go talk to your boss and he's assured me he will not
10 terminate you. And then this morning before I brought her in,
11 I said, You're -- to be clear, he was very clear with me and
12 assuring me that your job is not in jeopardy.

13 So, I think what he's seizing on, if I understand
14 it, is that in response to the question to me what if she just
15 leaves, what happens, does the trial just stop, and I said,
16 no, it doesn't, and I explained that, you know, we do have the
17 alternates but it's not an automatic. He shouldn't assume
18 that just because there are alternates, that that's a reason
19 to excuse a jury.

20 MR. DUBIN: Right. Right.

21 If Your Honor wouldn't mind, what I would like to do
22 is just ask her, if she's comfortable with it and if Your
23 Honor is comfortable with it, is to ask her if -- even though
24 she has been told by Your Honor that she wouldn't get, that
25 her employer has expressed to her that he would not terminate

1 her, it still seems to be on her mind.

2 So, the only thing that I would propose asking her,
3 if Your Honor wouldn't mind, is if she might feel better about
4 the situation if she does have a conversation with her boss
5 and tell him, you know, if she's comfortable with it, tell him
6 that she's concerned about, you know, whatever backlash it is,
7 whether he's going to be angry at her and take it out on her
8 or he is going to terminate her and if after speaking to him,
9 if he assures her or reassures her that that's not the case
10 and she takes the weekend to at least go through that
11 exercise, if she'd feel better about the possibility of coming
12 back.

13 THE COURT: Yes, Mr. Pitluck?

14 MR. PITLUCK: I think our view is consistent with
15 that. She's here today. I mean, we did hear her kind of
16 emotional request and I don't think we want, anybody wants to
17 be dismissive about, but I do agree with Mr. Dubin that it
18 would probably be useful for her to speak with her boss and
19 think about it over the weekend. I think, plus, it's not a,
20 you know, a juror leaving on Friday, then everybody else has
21 the weekend, you know, all the other jurors spend the weekend
22 thinking about it.

23 We prefer the Court do it. If the Court, in
24 chambers, the jury room or privately, says, we hear your
25 request, we understand the reasons behind it, we think it

1 would be useful, you have a chance to speak with your boss and
2 clear it up in your mind what any of the effects would be and
3 if you still want to serve, if you want to serve or you don't
4 want to serve, you can clarify it in your mind. But I think
5 coming in and coming out without having a chance to speak to
6 her boss it's probably not totally clear in her mind.

7 THE COURT: That's the difficulty because when I
8 spoke to her boss he said, look, I've been trying to get in
9 touch with her to see what's going on and she hasn't told me
10 everything which is good, she followed our instructions, but
11 I'm just trying to find out, you know, how much longer. I
12 said, I want you to know until now, we had no idea and we've
13 just been given that information today and that's why I'm
14 calling you. I didn't want to call you before then and this
15 is the date we've been given, December 15th.

16 From what I can glean, it's more of an interpersonal
17 issue. She's in a small office. He said there is himself, a
18 receptionist and Juror Number Two. And he said although
19 they're like family, she has expressed concern that he can be
20 difficult and that I think because of those sort of
21 complexities, both professionally and if there's a family or
22 some sort of interpersonal relationship, that she -- the
23 backlash, to me, I'm interpreting based on what she said, is
24 more, yes, it might be pay and it might just be tension in the
25 office. She's clear in her mind and I am clear based on what

1 this employer has told me that she will not lose her job.

2 I can ask her to please call him. I had urged her
3 to do that after I spoke to her boss because he said I would
4 like to have a conversation. So I was disappointed to hear it
5 was just an e-mail communication because I think a lot gets
6 misinterpreted from time to time in e-mails.

7 MR. DUBIN: I agree.

8 THE COURT: For whatever reason, she seems reluctant
9 to have that conversation.

10 MR. PITLUCK: So, I guess, Judge, I mean, there's
11 obviously something there and I think we're not in a position
12 to judge, and she did kind of emotionally ask to be dismissed
13 so we don't want to disregard that. I mean, this trial has
14 gone on a lot longer. There are hardship issues. I think
15 it's just worth it to clarify with her boss in her mind.

16 THE COURT: I said, We really can't come to a
17 decision until after you have a conversation with your boss
18 and have, you know, understand from his point of view and your
19 point of view what possible arrangements you can make. If
20 there are no arrangements, then you can let us know that. But
21 I think it is, in my mind, still not entirely clear to me
22 what, whether she'll be paid. She doesn't know and I think
23 she should have that conversation.

24 There seems to be a resistance to having that
25 conversation, I don't know what's behind it, but I think the

1 term "backlash," I don't know what that means but my sense is
2 it does not have to do with job security.

3 MR. DUBIN: That was my sense also. That is why I
4 asked. Maybe she'll be more candid with Your Honor if she's
5 not on the witness stand.

6 THE COURT: All right. I'll have her speak to me in
7 my robing room and I'll have a quick conversation with her.

8 MR. DUBIN: Thank you.

9 THE COURT: But what I will tell her is that today,
10 we're not going to make any decisions until she has a
11 conversation, an actual conversation with her boss and reports
12 back.

13 MR. DUBIN: Very well.

14 THE COURT: Thank you. Just give me one minute.

15 (Continued on next page.)
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1 (In open court; jury not present.)

2 THE COURT: Juror No. Two did agree to have a
3 conversation with her boss this weekend. We are going to line
4 up the jurors. Is there something we need to resolve now
5 regarding Ms. Oremland? I'll hold them.

6 MR. PITLUCK: Yes, your Honor. She's going on the
7 stand right now.

8 THE COURT: So, given your position and your
9 intentions, is the defense still having issues with the
10 proposed limitation that the government is putting on itself?

11 MS. DENERSTEIN: Yes, your Honor, in part, because I
12 don't think she is a market expert on market analysis and
13 that's never been disclosed to us before and Mr. Pitluck did
14 not proffer what she was going to say. We have the same
15 objection that she's not qualified to testify about what
16 impact this has on the market, the rules.

17 MR. PITLUCK: Judge, the court held three times
18 yesterday that she was qualified to offer this. We were
19 simply advancing this to give comfort to the court that this
20 was not going to be anywhere in the purview of opining on
21 anything relating to a legal issue, which we didn't think was
22 going to happen anyway. The court is familiar with Ms.
23 Oremland's qualifications. This was in an effort to try to
24 explain to your Honor and revise the way the questions are
25 asked a little bit to make it clear this is just based on her

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1 experience and analysis and her belief is when she conducts
2 investigations related to trading in the market.

3 The court heard she has 16 years of experience doing
4 this. Judge, this is substantially the same testimony she
5 offered in the Shkreli case with a few differences and we have
6 agreed to make those differences away from anything relating
7 to legal interpretations. This is just us trying to be clear
8 and to address the court's concerns which I don't think the
9 court had any. We're certainly trying to clarify.

10 THE COURT: Yes.

11 You know, I did make rulings on this issue. I did
12 also decide that Ms. Denerstein could ask some voir dire. My
13 view is her job is to analyze and review market information
14 and look for fraud in the market. She's not going to opine on
15 any ultimate issues. I believe she is qualified, but I will
16 give you an opportunity for some voir dire.

17 MS. DENERSTEIN: Your Honor, we're not going to voir
18 dire. With respect to what Mr. Pitluck just said, first of
19 all, she doesn't conduct investigations, actually she
20 testified to that at the last trial.

21 Second, she can certainly discuss how this impacted
22 her analysis, her understanding of the market impacts her
23 analysis. I don't think it's appropriate for her to testify
24 to the broad market.

25 THE COURT: You did say that she --

1 MS. DENERSTEIN: She can obviously testify to how
2 her understanding of the market impacts her analysis. It's
3 the broad proclamations she's now going to testify how these
4 Rules affect the market we object to because the disclosure
5 just happened this morning.

6 THE COURT: It's based on her experience and her
7 training and knowledge. She's been doing this for 16 years.
8 So it's my view that her testimony will be discussing
9 generally and not specifically with regard to this case her
10 knowledge and experience and what she has -- the opinions
11 that she's formulated on how those rules do impact the market.

12 I don't think it's outside of her area and certainly
13 I think it would be helpful to the jury to understand because
14 we've heard so many numbers and terms and provisions within
15 10-Qs and 10-ks and the other filing documents, the 13s and it
16 will just be helpful to the jury to understand what is
17 demanded of a public company with regard to its filings and
18 what some of these terms mean and why they may be important in
19 her view based on her experience as she conducts the analysis
20 that she does over the past decade and more, decade and a
21 half.

22 So, certainly you're not being precluded from voir
23 dire if you think it's appropriate. If you change your mind,
24 pop up and let me know. I think at this point, you know,
25 having had the opportunity to hear her, read the transcript,

1 understand what her testimony will be, the only difference
2 being that she'll offer a few limited opinions. I think that
3 it should not -- her testimony should not be circumscribed in
4 the way that you may propose and the way that you've
5 previously brought to my attention in your motions. Okay.

6 MS. DENERSTEIN: Your Honor, we are objecting as I
7 noted. We will abide by the court's ruling and we are not
8 going to voir dire.

9 THE COURT: Thank you.

10 MR. PITLUCK: In light of the that, I think where we
11 left before the jury was that we have moved to qualify her as
12 an expert. It's just pending the court's ruling.

13 THE COURT: I will do that in front of the jury, if
14 you want to repose the question.

15 MR. PITLUCK: Thank you, your Honor.

16 THE COURT: Thank you.

17 THE COURT: All right.

18 We'll get the jury back in here.

19 MR. PITLUCK: Okay.

20 (Pause.)

21 (Jury present.)

22 THE COURT: Good morning, members of the jury. All
23 jurors are present. Please, have a seat. Mr. Pitluck, you
24 may continue with your direct of Ms. Oremland.

25 MR. PITLUCK: Thank you, your Honor.

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1 your Honor, at the point we broke yesterday the
2 government had moved to qualify Ms. Oremland as an expert in
3 securities terminology, SEC disclosure requirements,
4 regulations and forms.

5 MS. DENERSTEIN: Pursuant to our prior conversation,
6 we can proceed.

7 THE COURT: Ms. Oremland will be qualified as an
8 expert in the SEC terminology, disclosure requirements,
9 regulations and forms, with recognition of our prior sidebars.

10 MR. PITLUCK: Thank you, your Honor.

11 DEBORAH OREMLAND, resumed.

12 DIRECT EXAMINATION (Continued)

13

14 Q Ms. Oremland, do you know the defendant Evan Greebel?

15 A No.

16 Q In relation to this case, were you asked to conduct and
17 analysis and prepare summary charts?

18 A Yes.

19 Q Who asked you to do that?

20 A The government.

21 Q Did you create summary charts in relation to this case?

22 A Yes, I did.

23 Q Were you paid by the United States Attorney's Office to
24 do so?

25 A No.

Oremland - direct - Pitluck

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1 Q Other than your salary at FINRA, did you receive any
2 additional payment to conduct this analysis?

3 A No.

4 Q Approximately how many hours did you spend on your
5 analysis in this case?

6 A I would say around fifteen.

7 Q Did you rely on certain materials to prepare your
8 analysis and summary charts?

9 A Yes.

10 Q I'm going to ask you to take a look at the binder in
11 front of you. Do you recognize the exhibits in that binder?

12 A Yes.

13 Q Are these the documents you used to prepare the chart?

14 A Yes, most of them, except for the blue sheet data.

15 Q Can you just describe what's in that binder?

16 A There are some SEC filings, there is trace and volume
17 information for Retrophin from Bloomberg and there's some
18 information from the transfer agent.

19 Q You mentioned something about blue sheet data that's not
20 in there, correct?

21 A Yes.

22 Q Did you review blue sheet data?

23 A Yes.

24 Q Was it contained on a separate CD?

25 A Yes.

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1 Q Let's go through some of that. Tab six contains what's
2 been admitted into evidence as Government Exhibit 955,
3 pursuant to stipulation. Can you just tell the jury what this
4 is?

5 A This is daily closing price and volume data for Retrophin
6 from Bloomberg. It's for the period December 17, 2012 through
7 September 30, 2014.

8 Q Can you just explain to the jury the three columns?

9 A Sure. The first column is the trade date. The second
10 column is it price of the stock at the end of the trading day.
11 And the third column is the share volume. So that's the
12 number of shares that were traded that day.

13 Q We're going to go through this in a little bit more
14 detail in a moment. Can you flip back to tab five, which
15 contains Government's Exhibit 115-31 in evidence.

16 A Yes.

17 Q Are these the transfer agent documents you testified to a
18 moment ago?

19 A Yes.

20 Q Which company are these for?

21 A For Retrophin.

22 Q Did you rely on these as part of your analysis?

23 A I did.

24 Q Tabs one through three contain Government Exhibits' 960,
25 behind tab one, 962, behind tab two, and 964 behind tab three.

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1 Can you tell the jury what each of those documents are?

2 A Sure. The first is a form 8-k for Desert Gateway. It's
3 an SEC filing. The second is a form schedule 13D, another SEC
4 filing for Retrophin and the third is another form schedule
5 13D.

6 Q Did you review all these documents prior to your
7 analysis?

8 A Yes.

9 MR. PITLUCK: Your Honor, at this time we would move
10 Government Exhibits' 960, 962 and 964 into evidence.

11 MS. DENERSTEIN: No objection.

12 THE COURT: We receive in evidence Government's
13 Exhibits 960, 962 and 964.

14 (So marked.)

15 Q I'm showing you a CD that's been labeled United States
16 vs. Evan Greebel, blue sheet data containing Government
17 Exhibits 950 to 954.

18 Did you review the contents of this CD.

19 A Yes.

20 Q What are they?

21 A These are the blue sheets.

22 Q What is blue sheets?

23 A Blue sheet data is a special type of trading data from
24 what's called a clearing firm. It contains all the trades in
25 a stock for a particular period of time and it also includes

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1 information about the customers behind the trades.

2 Q And is blue sheet data voluminous?

3 A Yes.

4 Q Do you see initials and a date on there?

5 A Yes.

6 Q What does that signify?

7 A Those are my initials and it signifies that I reviewed
8 what's on the CDs.

9 Q Did you rely on this evidence in preparing your summary
10 charts?

11 A Yes.

12 MR. PITLUCK: Your Honor, Government Exhibits 950
13 through 54 have been admitted pursuant to stipulation.

14 THE COURT: All right. Thank you.

15 Q Who provided the underlying data for you to review?

16 A The government provided some of the data, just the blue
17 sheets and the transfer agent records. And I obtained some of
18 the other information from public sources.

19 Q I would like to show you what's been marked for
20 identification as Government Exhibits 990, 992 and 995. Those
21 are behind tab eight, ten and eleven in your binder. These
22 are for identification?

23 Do you recognize these Ms. Oremland.

24 A Yes.

25 Q What are they?

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1 A These are the charts that I created.

2 Q Do these summary charts fairly and accurately represent
3 the voluminous data that we discussed a moment ago?

4 A Yes.

5 MR. PITLUCK: The government moves to admit
6 Government Exhibits 990, 992 and 995 an into evidence.

7 MS. DENERSTEIN: Are they demonstratives to aid the
8 jury?

9 MR. PITLUCK: They are. They are summary charts.
10 They are summaries of the blue sheet data.

11 MS. DENERSTEIN: No objection to demonstratives.

12 THE COURT: We receive in evidence Government's
13 Exhibits 990, 992 and 995.

14 (So marked.)

15 Q Ms. Oremland, from with your work at FINRA are you
16 familiar with what a stock is?

17 A Yes.

18 Q Can you tell us what a stock I guess?

19 A A stock is a type of security that represents an
20 ownership interest in a company.

21 Q Does it have another name?

22 A It's often called an equity.

23 Q Can you buy and sell shares of stock?

24 A Yes.

25 Q How do you do that?

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1 A You do that on the stock market.

2 Q What is a shareholder?

3 A A shareholder is an individual who owns shares or stock
4 in a company.

5 Q Are you familiar with the term short sale?

6 A Yes.

7 Q What is a short sale?

8 A A short sale is kind of a complicated trade. It's when
9 you're betting essentially that the market is going to go
10 down. You have to sell shares that you don't already own in
11 the hopes that the price of the stock is going to fall and
12 then you can make the money off of the difference. It's
13 complex, so I like to use an analogy. Let's say there's going
14 to be a drought for a month and I find out that the current
15 price for umbrellas is around ten bucks and I find someone who
16 has a ton of umbrellas and I borrow one of their umbrellas and
17 I sell it immediately for \$10. Now, the drought hits and lo
18 and behold of the price of umbrellas fall to three dollars.
19 So I go into the marketplace for umbrellas and I buy one for
20 three dollars and I get to return that umbrella to who I
21 borrowed it from but I get to keep the difference, the seven
22 dollars. That's really how short selling works.

23 Q So as part of that does somebody who looks into short
24 sell have to locate a stock to purchase?

25 A Yes. You have to make sure there are shares to borrow.

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1 Q Are you familiar with the term cover as it relates to a
2 short sale?

3 A Yes.

4 Q What is that?

5 A That pertains to when you close out your position, when
6 you buy the shares in the market.

7 Q You testified an moment ago about stock markets?

8 A Yes.

9 Q Are there different kinds of stock markets and securities
10 exchanges?

11 A Yes.

12 Q Can you just describe the different kinds of the
13 securities exchanges?

14 A Sure.

15 There's what are known as national securities
16 exchanges. Those are the New York Stock Exchange, the NASDAQ.
17 Generally companies that trade on those markets are big. They
18 have to go through a stringent listing process. They have to
19 file extensive documents with the SEC. They have to be a
20 certain size, have a certain amount of assets amongst other
21 criteria. But there are some other tiers of marketplaces
22 where stocks can trade and one of those is the Over The
23 Counter Markets. Their companies are much smaller. They
24 don't have to go through a listing process. Sometimes they
25 don't even need to file reports with the SEC. But a lot of

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1 them do have to. And they don't have to maintain a certain
2 price to be quoted. They are generally smaller, lower price,
3 start-up companies trade on the on the Over The Counter
4 Market.

5 Q If a company is listed on one of these Over The Counter
6 Markets but they want to move to one of the national exchanges
7 that you mentioned, are there requirements they have to go
8 through?

9 A Yes.

10 Q What are those requirements?

11 A Well, if the company became a company through what's
12 called a reverse merger, that company has to trade on the Over
13 The Counter Market for at least a year and it also has to file
14 periodic reports with the SEC. It also has to maintain a
15 closing price of four dollars for 30 of the last 60 days prior
16 to the uplisting to the let's say the NASDAQ market.

17 Q You said uplisting. Can you tell the jury what uplisting
18 means?

19 A It's when your company goes from the Over The Counter
20 Market to one of the bigger marketplaces, one of the national
21 security exchanges like the NASDAQ.

22 Q As part of your work do you follow the stock price
23 movement of publicly traded companies?

24 A Yes.

25 Q You mentioned a term reverse merger. Can you tell the

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1 jury what a reverse merger is?

2 A Reverse merger is when a private company goes public by
3 trading with a publically traded shell company. So at the end
4 of the day the private company becomes the public company.

5 Q And in your experience with reverse mergers, does the
6 publicly traded shell company have significant assets?

7 A A shell has very little assets, no real business, but
8 it's currently trading probably very infrequently on the Over
9 The Counter Market. But there's really nothing to it.

10 Q Now, in this case, in particular, did you review
11 materials that were related to a reverse merger?

12 A Yes.

13 Q Which one?

14 A The reverse merger between the Desert Gateway and
15 Retrophin.

16 Q When did that take place?

17 A December 12, 2012.

18 Q What was the new company called after the reverse merger?

19 A Retrophin.

20 Q What market did Retrophin trade on after the reverse
21 merger?

22 A On the Over The Counter QB, OTCQB.

23 Q Is that a particular tier or particular kind of Over The
24 Counter Market?

25 A Yes. It's one of the tiers of the OTC markets group. It

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1 does require the companies to file periodic reports with the
2 SEC.

3 Q So on the OTCQB was Retrophin required to make filings
4 with the SEC?

5 A Yes.

6 Q And did Retrophin ever move to a different market?

7 A Yes.

8 Q Which one did it move to?

9 A To the NASDAQ.

10 Q When did that merger -- was that an uplisting?

11 A Yes.

12 Q When did that uplisting take place?

13 A In January 2014.

14 Q Is there a time requirement for how long a company must
15 be traded on the OTCQB before it can uplist to the NASDAQ?

16 A Yes. It has to trade for a year.

17 Q Now, are there any SEC filings that need to be made when
18 a reverse merger occurs?

19 A Yes.

20 Q What kind of filings?

21 A It's the form 8-K.

22 Q What is a form 8-K?

23 A The form 8-K is a form that's required to be filed any
24 time there's what's called a material event with the company,
25 any kind of big, major change, any event that needs to be

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1 disclosed to the public.

2 Q And what kind of information is included in an 8-K after
3 a reverse merger?

4 A An 8-K, after a reverse merger, has a lot of information
5 about the new publicly traded company. It has audited
6 financial information, information about the company's
7 business and it's a very extensive document. It goes through
8 what happened with the -- in the reverse merger,
9 shareholders, owners, ownership information.

10 Q A description of business?

11 A Yes.

12 Q I would like to direct your attention to Government's
13 Exhibit 960 in evidence. And that's behind tab one in your
14 binder. Is this the 8-K for the Dessert Gateway Retrophin
15 reverse merger?

16 A Yes.

17 Q Is this about an 80 page document?

18 A Yes.

19 Q When was this document filed?

20 A The date of the report is December 12, 2012.

21 Q Can we go to the second page. Are these the items that
22 are included within this 8-K towards the top?

23 A Yes.

24 Q And can you just describe for the jury what they are,
25 read to the jury what they are, please?

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1 A The first item is the entry into the material definitive
2 agreement. The second is completion of acquisition or
3 disposition of assets. The third is unregistered sales of the
4 equity securities. The Fifth -- item 5.01 is changes in
5 control of registrant. The next item is departure of the
6 directors or principal officers, election of directors,
7 appointment of the principal officers, compensatory
8 arrangements of certain officers. Next is change in shell
9 company status. And the final is financial statements and
10 exhibits.

11 Q I would like to direct your attention to page 75 of 80
12 towards the back. That's on the bottom in the corner, your
13 Honor. Do you see the section under which it says shares
14 eligible for future sale? What does that say, how many shares
15 are eligible for future sale?

16 A It says there are 8,338,837 shares of the common stock.

17 Q And then what's it say after that?

18 A Of these shares 5,838,837 are restricted securities under
19 Rule 144.

20 Q What is a restricted security?

21 A A restricted security is a security that has restrictions
22 on resale. You can't immediately turn around and sell these
23 securities into the market. They are usually obtained
24 directly from the company. They are held by -- oftentimes by
25 people closely associated with the company.

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1 Q How can you tell if a security is restricted?

2 A There's a large legend on the stock certificate.

3 (Continued on next page.)

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1 BY MR. PITLUCK: (Continuing)

2 Q And you testified a moment ago that you reviewed records
3 from a transfer agent?

4 A Yes.

5 Q Can you explain what a transfer agent is?

6 A A transfer agent is a company that is, maintains a lot of
7 different things for a, for public companies, including
8 shareholder lists, issuances and cancellations of stock
9 certificates, and they also are the ones who are able to lift
10 the restrictions off of restricted securities.

11 Q How does one go about doing that, lifting restrictions
12 off of restricted securities?

13 A Well, you have to have an attorney opinion letter in
14 order to do so to make the determination that the shares are
15 now eligible to be free-trading shares.

16 Q And the sentence that we just saw in Government
17 Exhibit 960 said, mentioned Rule 44.

18 Can you tell the jury what Rule 44 is?

19 A Sure. Rule 44 is an SEC rule that governs the resale of
20 restricted securities. So, really, any time a company wants
21 to sell its shares, it's supposed to register those shares
22 with the SEC. Now, there are certain exemptions that a
23 company can use. One of them is to do what's called a private
24 offering, to offer shares to a limited amount of people, not a
25 widespread group.

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1 So -- so, in those cases, the company doesn't have
2 to file a lengthy, what's called a registration statement.
3 They don't have to go through that process. Now, the
4 recipient of those shares has to abide by the rules under
5 Rule 44 before they can turn around and sell their shares.

6 Q So you just mentioned something called a registration
7 statement. Is that also known as an S-1?

8 A Yes, that's a type of registration statement.

9 Q Can you just explain to the jury briefly what a
10 registration statement is?

11 A Registration statement is another really lengthy SEC
12 filing. It contains a lot of information about the company
13 and it's a very extensive disclosure wherein shares are
14 registered to be sold.

15 Q So, if you don't have a registration statement, then
16 Rule 44 applies?

17 A Yes. Rule 44 applies to some holders of securities all
18 the time.

19 Q And what holders of securities does the Rule 44 apply to
20 all the time?

21 A Well, if you're what's known as an affiliate of a
22 company.

23 Q What is an affiliate of a company?

24 A An affiliate is someone who can exert control over a
25 company. There's not one definition. It's really determined

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1 on a case by case basis. Generally, if you're an officer or
2 director, you own 10 percent or more of shares, you're
3 considered an affiliate, but, really, it's anyone who can
4 control the company directly or indirectly or is in common
5 control with the company. It's a case by case determination.

6 Q So, what are the restrictions on affiliates trading their
7 shares in a company?

8 A Affiliates, they can't sell as many shares as they want.
9 There are several itemized restrictions on to the quantity of
10 shares that they can sell into the market.

11 Q So, can we -- going back to what we just saw on
12 Government Exhibit 960, so there are approximately 8.3 million
13 shares for the company of common stock and approximately 5.8
14 of them are restricted. What's the status of the remaining
15 2.5 million shares?

16 A Those are what's called free-trading shares.

17 Q What does that mean?

18 A That means that they could be freely sold, freely traded.

19 Q And have you heard of the expression the float --

20 A Yes.

21 Q -- in the context of securities? What is a float?

22 A The float is the amount of free-trading shares.

23 Q Are you familiar with something called a Form 4?

24 A Yes.

25 Q What is a Form 4?

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1 A A Form 4 is another SEC disclosure document and that is
2 used -- it's required when an officer or director or a major
3 shareholder of 10 percent or more makes a transaction in the
4 market. Either when they buy shares or sell them, they have
5 to file a Form 4 with the SEC.

6 THE COURT: Form 4, you said?

7 THE WITNESS: Yes.

8 Q And what's a Form 3?

9 A The Form 3 is the initial form that the insider has to
10 file with the SEC to indicate how many shares they owned.

11 Q And Form 4 if those shares changed?

12 A Yes.

13 Q In your experience, what role does the Form 4 play in the
14 market?

15 A Well, it informs investors of when it, the insiders are
16 trading. So if you're trying to make an investment decision
17 and you see that there, that the insiders are selling a fair
18 amount of the stock, you might not want to buy the stock and
19 vice versa.

20 Q And what is a 10-K filing?

21 A A 10-K is the annual report that companies need to file
22 with the SEC and the key element of those filings is that the,
23 their financials need to be audited.

24 Q What does that mean, to be audited?

25 A By -- an accountant has to certify and review the

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1 financial statements.

2 Q And what is a 10-Q, finally?

3 A The 10-Q is kind of like a quarterly update that the
4 company has to file with the SEC.

5 Q Does that include audited financial statements?

6 A No, it doesn't have to.

7 Q In your experience, what role do the 10-Q and 10-K
8 filings play in the market?

9 A Again, it's, it provides the investor with a lot of
10 information as to the company's health. It gives them insight
11 into what's on the balance sheet, what's going on in the
12 business, who the owners of the companies are. Sometimes
13 there's really nothing else that the public can rely on
14 besides those filings, there's no other information that gives
15 you quite as much data.

16 Q Are you familiar with Rule 13D of the Securities and
17 Exchange Act of 1934?

18 A Yes.

19 Q And what is that?

20 A Rule 13D requires shareholders who own about 5 percent or
21 more of a class of stock to file a disclosure document with
22 the SEC indicating how many shares they own.

23 Q And the 5 percent threshold you mentioned, is that direct
24 and indirect or just direct ownership?

25 A No, that's direct and indirect. That's what's called a,

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1 a beneficial owner. It's an individual who owns 5 percent or
2 more, either directly or indirectly. You can't sidestep
3 filing a 13D by making some sort of contract or arrangement to
4 hide your ownership. If you own any shares, you have to file
5 the 13D.

6 Q And in your experience, what role does the form, the Rule
7 13D form play in the market?

8 A Again, it provides the investor with really key
9 transparency into the company. You see who the major
10 investors are. These are people who can have an affect on the
11 company, either by their, what's called their voting power,
12 their power to vote and control the company's corporate
13 actions or what's called their investing power, their power to
14 sell shares and affect the market of that stock.

15 Q So, going to the free-trading shares of Retrophin that
16 are, that we saw referenced in the 8-K, based on your review
17 of documents that are admitted into evidence in this case, do
18 you know how those shares were distributed around the time of
19 the reverse merger?

20 A Yes.

21 Q How do you know that?

22 A By review of the transfer agent records.

23 Q And did you prepare a summary chart of the share
24 distribution of these, of some of these shares for the jury?

25 A Yes.

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1 Q Can you go to Government Exhibit 990 which is tab eight
2 in your binder?

3 THE COURT: May I just ask one question before you
4 get into this area?

5 MR. PITLUCK: Please, Judge.

6 THE COURT: You talked about the Form 13D and you
7 said shareholders who own more than 5 percent are required to
8 report. Is that -- does that include both restricted and
9 unrestricted shares? Because you talked about the potential
10 effect that the 5 percent and above would have on the market,
11 but if their shares are restricted, would they not --

12 THE WITNESS: Your Honor, that's where the voting
13 power comes into play.

14 THE COURT: Yes.

15 THE WITNESS: So, if you own shares, you can
16 still -- you have votes even if you can't sell them.

17 THE COURT: So, the 13D is required for anybody who
18 owns 5 percent of restricted or unrestricted shares?

19 THE WITNESS: Yes, it's technically of a certain
20 class of stock. So if you own 5 percent or more of the common
21 stock, you have to file the 13D.

22 THE COURT: Thank you.

23 Q Regardless of whether it's unrestricted or restricted?

24 A Right.

25 MR. PITLUCK: Thank you, Judge.

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1 Q So, going to Government Exhibit 990, can you just explain
2 for the jury what's shown on this chart?

3 A Sure. This shows a distribution of the free-trading
4 shares as of December 17, 2012.

5 Q And can you read for the jury who they went to?

6 A Sure. 350,000 shares went to Kevin Mulleady; 300,000
7 shares went to Thomas Fernandez; 300,000 shares to Marek
8 Biestek; 350,000 shares to Tim Pierotti; 350,000 shares to
9 Claridge Capital LLC; 250,000 shares to Andrew Vaino; and
10 100,000 shares to Edmund Sullivan.

11 Q And is Martin Shkreli listed on that start?

12 A No.

13 Q And of those, those names you just read, what is the
14 total number of shares distributed to the, to this group of
15 individuals?

16 A 2 million shares.

17 Q What percentage of that is it of the total free-trading
18 shares?

19 A 80 percent.

20 Q Based on your review of the transfer records, were you
21 able to determine the remainder of, who had the remainder of
22 the free-trading Retrophin shares at this point in time?

23 A Yes.

24 Q And who was that?

25 A Michael Fearnow and Ruth Shepley.

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1 Q And I'm just going to have you go to Government
2 Exhibit 115-31 in evidence.

3 Are these the transfer agent records?

4 A Yes. I'm sorry. Troy Fearnow and Ruth Shepley.

5 Q If we go to page Standard-698, please, is that the
6 distribution at the bottom there?

7 A Yes.

8 Q And then Ruth Shepley is underneath that?

9 A Yes.

10 Q And do you know of a connection between Ruth Shepley and
11 anybody else?

12 A I think she is a partner of Michael Fearnow.

13 Q And in connection with Retrophin, did you also review 13D
14 filings?

15 A Yes.

16 Q Can we go to Government Exhibit 962 which is tab two in
17 your binder and this is in evidence. What is this?

18 A This is a 13D, Form 13D for Retrophin filed by Martin
19 Shkreli.

20 Q Is this one of the forms we were talking about before,
21 the statement of beneficial ownerships?

22 A Yes.

23 Q What date was this filed?

24 A December 20, 2012.

25 Q So, let's go to the next page. Can you see the entities

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1 that are in the middle there?

2 A Yes.

3 Q What does that signify?

4 A That's who, who is reporting. These are the owners who
5 are reporting.

6 Q In this 13D?

7 A Yes.

8 Q Is it Martin Shkreli, MSMB Healthcare Management LLC,
9 MSMB Healthcare LP, MSMB Healthcare Investors LLC, MSMB
10 Capital Management LLC, MSMB Capital Management LP and Desert
11 Gateway?

12 A Yes.

13 Q All listed in an address at 777 Third Avenue?

14 A Yes.

15 Q Let's go to the next page, to the third page of the
16 document.

17 What are we looking at here?

18 A This is the information regarding MSMB Capital Management
19 LP.

20 Q What kind of information is reported here?

21 A It's the number of shares that are beneficiary owned.

22 Q So box number one was the name of the entity, correct?

23 A Yes.

24 Q You see where, box number four where it says, Source of
25 Funds?

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1 A Yes.

2 Q What does that mean?

3 A The source of the funds to pay for the acquisition of the
4 shares.

5 Q And what does "WC" stand for?

6 A Working capital.

7 Q So what, generally what does that mean?

8 A That's the company's money capital that they use to buy
9 the stock.

10 Q So this is MSMB Capital Management's money used to buy
11 stock in Retrophin?

12 A Yes.

13 Q And you see where it says, Sole Voting Power?

14 A Yes.

15 Q And 375,000 shares?

16 A Yes.

17 Q What does that mean, "Sole Voting Power"?

18 A That this entity has voting power over 375,000 shares.

19 Q Do you see the box below where it says, Share voting
20 power?

21 A Yes.

22 Q What does that mean?

23 A That means that it's shared -- well, in this instance,
24 it's zero shares so they don't share voting power with
25 anybody, but it would indicate if you shared voting power and

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1 how many shares.

2 Q And then --

3 A Or shared.

4 Q The bottom right below that, Sole Dispositive Power.

5 What does that mean?

6 A That indicates, you know, how many shares that you could
7 sell.

8 Q And --

9 A That you own, that you could possibly sell. And in this
10 case, it's 375,000.

11 Q And Box 11, the aggregate amount beneficiary owned by
12 each reporting person, what number is listed there?

13 A 375,000.

14 Q And finally, where it says, Percent of class represented
15 by amount in row?

16 A Yes.

17 Q What number is that?

18 A 13 -- I'm sorry, 4.5 percent.

19 Q And what does that number mean?

20 A That's the percentage of the amount of stock that this
21 entity owns.

22 Q Okay. So there is -- if we can just go to the next page
23 briefly. This is MSMB Capital Management LLC.

24 What's listed as the source of funds here?

25 A They're "0" which is "other."

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1 Q Generally, what are some of the things in "other"?

2 A Other forms of consideration, stock. You see this with
3 various mergers.

4 Q And this one has shared voting power, correct?

5 A Yes.

6 Q And that's what you talked about before?

7 A Yes.

8 Q Is that the same amount of shares that MSMB Capital
9 Management LP owned?

10 A Yes.

11 Q So, briefly, let's go to the next page. It says, MSMB
12 Healthcare LP.

13 What was the source of funds that MSMB Healthcare
14 used to purchase shares in Retrophin?

15 A Working capital.

16 Q How many shares of sole voting power does it have?

17 A 473,274 shares.

18 Q What percent of the shareholder class is represented by
19 that amount?

20 A 5.68 percent.

21 Q And MSMB Healthcare Investors LLC is the next page. What
22 is the source of funds listed there?

23 A Working capital and other.

24 Q And this one has sole voting power of 413 shares?

25 A Yes.

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1 Q And how much shared voting power does it have?

2 A 473,274 shares.

3 Q Is that the same amount as we saw in the previous exhibit
4 for MSMB Healthcare LP?

5 A Yes.

6 Q Let's go ahead two pages to Martin Shkreli. And how many
7 shares does Martin Shkreli have ownership over, I'm sorry,
8 sole voting power over?

9 A 2,531,920 shares.

10 Q And shared voting power?

11 A 848,687 shares.

12 Q So, what's the aggregate amount of beneficiary-owned
13 shares by each reporting person?

14 A 3,380,607 shares.

15 Q And what percent of the ownership class?

16 A 40.54 percent.

17 Q You see the source of funds? What source of funds did,
18 according to this document, what source of funds did Martin
19 Shkreli use to purchase these shares?

20 A It says "PF" which is personal funds and other.

21 Q Finally on the bottom, you see where it says, Type of
22 Reporting Person, "IN"?

23 A Yes.

24 Q Is that an insider?

25 A It's an individual.

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1 Q I'm sorry. Individual.

2 Based on your transfer records that we just saw in
3 evidence, are these shares that Martin Shkreli owns restricted
4 or free trading?

5 A Restricted.

6 Q So let's go to page 9, two pages ahead.

7 Do you see at the top, there's some language that
8 says, Immediately Effective, Immediately Prior to the
9 Effective Time?

10 A Yes.

11 Q Can you read the last sentence -- the last two sentences
12 in that paragraph that says, "As a result"?

13 A Sure. As a result of the merger, Mr. Shkreli's Retrophin
14 common stock and unvested shares of Retrophin common stock
15 converted into 2,531,920 shares of common stock. The shares
16 of Retrophin common stock held by Mr. Shkreli prior to the
17 merger were purchased by Mr. Shkreli with his personal funds.

18 Q And can we go down four paragraphs to the one that
19 starts, "Mr. Shkreli disclaims."

20 A Mr. Shkreli disclaims beneficial ownership of the shares
21 held by MSMB Healthcare LP, MSMB Healthcare Investors LLC and
22 MSMB Capital Management LP.

23 Q And can we go to the, to the second to last page of this
24 document. Do you see where it says, item six, Contracts,
25 arrangements, understandings or relationships with respect to

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1 securities of the issuer?

2 A Yes.

3 Q Can you just read that sentence.

4 A There are no contracts, arrangements, understandings or
5 relationships, legal or otherwise, between the reporting
6 persons and any person with respect to securities of the
7 issuer.

8 Q Okay. Can we go to the last page, the signature. Did
9 Martin Shkreli sign for every entity?

10 A Yes.

11 Q Including himself?

12 A Yes.

13 Q And if you could flip to tab three which is Government
14 Exhibit 964. What is this?

15 MR. PITLUCK: This is in evidence, I'm sorry, Judge.

16 A This is an amendment to the 13D we were just reviewing.

17 Q What is an amendment to the 13D?

18 A Well, there is a change to --

19 Q What date was this filed?

20 A February 19, 2013.

21 Q Who does it say it was filed by?

22 A Martin Shkreli.

23 Q And what was -- why was there an amended 13D issued in
24 February of 2013?

25 A Because the company had a private placement in February.

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1 Q What is a private placement?

2 A That's a, when the company has a private offering of
3 shares to raise money.

4 Q Can we just go to the next page briefly. Do you see the
5 entities listed there?

6 Has Retrophin replaced Desert Gateway on this?

7 A Yes.

8 Q Why is that?

9 A The name changed at this time.

10 Q I'm going to briefly walk through some of the changes.
11 Can we go to the next page. This is the report for MSMB
12 Capital Management.

13 According to this, how many shares does MSMB Capital
14 Management own?

15 A Zero shares.

16 Q Same thing for MSMB Capital Management LLC on the next
17 page?

18 A Yes.

19 Q And on the third page, for MSMB LP, how many shares does
20 MSMB have sole voting power over -- sorry -- MSMB Healthcare
21 LP have sole voting power over?

22 A 473,274 shares.

23 Q It's the same as what we saw in the original 13D?

24 A Yes.

25 Q And you see where it says, Percent of class represented

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1 by amount? In row one, it says 4.05 percent?

2 A Yes.

3 Q Is that greater or smaller than the amount we saw in the
4 previous exhibit for the percent of class owned?

5 A It's smaller.

6 Q Why is that?

7 A Because there are more shares that were just offered.
8 There are now more shares so the percentage of ownership
9 drops.

10 Q And let's go to Martin Shkreli disclosure which is on
11 page, I believe it's 8. Sorry, the one more. There we go.

12 You see how there are 3,187,200 shares?

13 A Yes.

14 Q And what's the percent of class represented by amount in
15 that row?

16 A 27.17 percent.

17 Q Is that less than we saw before?

18 A Yes.

19 Q Okay. Let's go to the next page, please. It says, item
20 three, The source and amount of funds or other considerations.
21 It says, item three of the schedule 13D is hereby amended and
22 supplemented as follows.

23 Can you just read that for the jury?

24 A Sure. On February 14, 2013, Mr. Shkreli purchased
25 120,000 shares of common stock and common stock purchase

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1 warrants to purchase 60,000 shares of common stock, the
2 warrants, from the issuer for an aggregate purchase price of
3 \$360,000. The warrants are exercisable at any time upon the
4 election of the holder, beginning on the date of issuance and
5 ending of the fifth anniversary of the date of issuance, an
6 initial exercise price per share of \$3.60, subject to
7 adjustment as provided therein. The source of funds used by
8 Mr. Shkreli to purchase such securities was his personal
9 funds.

10 Q Can you just explain for the jury what a warrant is?

11 A A warrant is a type of security that gives you the right
12 but not the obligation to buy a certain amount of shares at a
13 set price.

14 Q Okay. And let's go ahead to the next page, item five,
15 Interest in securities of issuers.

16 Can you -- you see where there's a star there and it
17 says, "based on," and there's a number. Can you read that for
18 the jury?

19 A Sure. Based on 11,672,167 shares of common stock
20 outstanding, following the private placement, which figure
21 reflects, I, 8,338,836 shares of common stock as reported in
22 the issuer's current report on form 8-K, filed on December 19,
23 2012, and, two, an aggregate 3,333,331 shares of common stock
24 issued subsequent thereto, as reported in the issuer's current
25 report on form 8-K filed by the issuer on February 19, 2013,

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1 consisting of 272,221 shares of common stock issued in certain
2 private placement transactions in January 2013 and 3,061,110
3 shares of common stock issued in connection with the private
4 placement.

5 Q So, in plain English, can you explain to the jury what's
6 disclosed in item two there?

7 A That's -- it's the number of shares that were reported as
8 outstanding on the 8-K, plus the additional shares issued in
9 the private placements in January and February.

10 Q Okay. And, finally, in item six on the next page, where
11 it says, Contracts arrangements, understandings or
12 relationships, can we go to the next page, you see that line
13 at the bottom of the disclosure. You see where it says, "In
14 connection with" in the second line under item six?

15 A Yes.

16 Q It says, In connection with the closing of the private
17 placement on February 14, 2013, the issuer entered into a
18 registration rights agreement with the purchase of the issuer
19 securing the private placement including Mr. Shkreli.

20 What's a registration rights agreement?

21 A This is an agreement between the purchasers of the stock
22 that I think indicates that they're going to, that the company
23 will file a registration statement.

24 Q What does that mean, when the company files a
25 registration statement?

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1 A That means that the shares will be registered and if
2 you're not under other restrictions, you would be able to sell
3 those shares.

4 Q So those shares would become free trading after the
5 registration statement was filed?

6 A Yes.

7 Q Now, did you review the trading activity in Retrophin
8 after the reverse merger?

9 A Yes.

10 Q What data did you rely on for your review?

11 A Bloomberg price line data and the blue sheet data.

12 THE COURT: Again, you tend to drop your voice at
13 the end so please try to keep up the volume.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: Thank you.

16 Q And let's start with Bloomberg price and trading data.
17 What is Bloomberg data?

18 A Bloomberg is a subscription service. It's widely used by
19 the financial industry. It has a lot of information about
20 public companies including historical price and volume
21 information.

22 Q Is that, is that information reported to the public?

23 A Yes.

24 Q Is that information widely used within the financial
25 industry?

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1 A Yes.

2 Q What is -- what is blue sheet data? You talked about it
3 a little bit before.

4 A That's a certain type of training data that's obtained
5 from what's called a clearing firm and it has trading
6 information about a stock for a particular period, but it
7 includes who's behind the trade so the names of the customers,
8 their address, it has their account number, it has a lot, even
9 sometimes has their tax ID number or Social Security number
10 and it indicates how much they bought and sold of the stock on
11 any given day.

12 Q And is blue sheet data available to the public?

13 A Absolutely not.

14 Q And on any given day, do the amount of shares on the blue
15 sheet data for a specific stock always match the publicly
16 available Bloomberg data?

17 A No.

18 Q Why not?

19 A Because the blue sheet data includes trades that are made
20 by intermediary firms that are called market makers.

21 Q What is a market maker?

22 A A market maker is a special type of broker-dealer that
23 commits itself, really, to facilitating trading of a stock in
24 the market. It stands always ready to buy and sell the stock
25 if there's an interest. So, they're, they're like a

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1 middleman. They're the ones who put together the buyers and
2 the sellers in the market.

3 Q And are the shares that are traded by these market making
4 firms included in the publicly available reported share
5 volume?

6 A No.

7 Q Why not?

8 A Because it would be, like, it would be double counting or
9 maybe sometimes triple counting because sometimes the market
10 makers have to get shares from other firms in order to put the
11 buyer and the seller together. What's reported to the public
12 is the true transaction amount between buyer and seller.

13 Q Okay. Did you create a summary chart of your analysis of
14 the trading in Retrophin around, following the reverse merger?

15 A Yes.

16 Q I'd like you to look at Government Exhibit 995 in
17 evidence. It's at tab 11 in your binder. It's also on the
18 screen.

19 All right. What's the title of the chart?

20 A Retrophin, Incorporated, RTRX, daily closing prices and
21 volume comparison, December 17, 2012 through February 28,
22 2013.

23 (Continued on next page.)
24
25

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1 BY MR. PITLUCK:

2 Q Okay. So what's on the bottom?

3 A The bottom is the trade date.

4 Q And what's on the right-hand side of the chart, on the
5 right axis of the chart?

6 A That is the closing price of the stock.

7 Q Where did you obtain the data for the closing price of
8 the stock?

9 A From Bloomberg.

10 Q Is the blue line there tracing the closing price of the
11 stock?

12 A Yes.

13 Q What's on the left side of the chart?

14 A That refers to the share volume, the volume of shares
15 traded.

16 Q Are those represented by the bar charts of different
17 colors there?

18 A Yes.

19 Q Where did the underlying data to prepare those bar charts
20 come from?

21 A This came from Bloomberg and from the blue sheet data.

22 Q What do the different colors in the chart signify?

23 A Well, the green part of the bar represents trading by
24 certain selected accounts which are identified in the green
25 box to the right of the chart.

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1 Q Who are those accounts?

2 A Martin Shkreli, Kevin Mulleady, Andrew Vaino and Mark
3 Biestek.

4 Q Who is in the purple?

5 A That's Tim Pierotti.

6 Q What about the red?

7 A The red shows the other market volume, everyone else in
8 the market.

9 Q Can you explain to the jury how you determine the volume
10 of shares traded by each of those entities on any given date?

11 A Sure. I reviewed the blue sheet data and I found the
12 trades made by these individuals, added them up and days where
13 they did trade subtracted it -- that number from the total
14 market volume.

15 Q As reported on Bloomberg?

16 A Yes.

17 Q Can we go back to Government's Exhibit 990 for a second.
18 Put them side by side?

19 So 990 was the chart we looked at previously, was
20 some of the recipients of the free trading shares, correct.

21 A Yes.

22 Q In the green account -- sorry -- in the green chart on
23 Governments' Exhibit's 995, you included he select, Martin
24 Shkreli, Kevin Mulleady, Andre Vaino and Marek Biestek. Are
25 Kevin Mulleady and Andrew Vaino and Marek Biestek some of the

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1 recipients of the free trading shares?

2 A Yes.

3 Q Is Tim Pierotti there?

4 A Yes.

5 Q Why didn't you include the other recipients of the free
6 trading shares that are not on the chart, Thomas Fernandez,
7 Claridge Capital and Edmund Sullivan?

8 A Because they didn't trade during this time period.

9 Q Not at all?

10 A Not at all.

11 Q Can we focus on 995, please.

12 You testified a moment ago that the reverse merger
13 took place on December 12, 2012, correct?

14 A Yes.

15 Q What was the first day of trading after date where you
16 identified trading in Retrophin?

17 A December 17, 2012.

18 Q And how much was traded on that day?

19 A 100 shares.

20 Q And who traded those shares?

21 A Martin Shkreli.

22 Q Did he purchase shares?

23 A Yes.

24 Q What was the purchase price?

25 A Seven dollars and 69 cents.

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1 Q Did anyone else trade shares in Retrophin on that day?

2 A No.

3 THE COURT: Sorry. The purchase prices is \$7.69 per
4 share or for aggregate shares purchased? You said \$7.69?

5 THE WITNESS: That was the price and he purchased
6 100 shares.

7 Q That was the price per share?

8 A Yes.

9 THE COURT: So bought 100 shares for --

10 THE WITNESS: Seven hundred sixty-nine dollars worth
11 of shares.

12 THE COURT: Thank you.

13 Q Did you learn from the blue sheet data whether Martin
14 Shkreli traded shares on December 12, 2012, the day of the
15 reverse merger?

16 A Yes.

17 Q Was that the last trade prior to the reverse merger?

18 A Yes.

19 Q On that day did Martin Shkreli buy or sell shares?

20 A He sold shares.

21 Q For how much?

22 A Two dollars and 50 cents.

23 Q On December 12 he sold for \$2.50 and on December 17 he
24 purchased for \$7.69 cents?

25 A That's right.

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1 Q What happened to the stock price in the days following
2 Mr. Shkreli's purchase on December 17, 2012?

3 A In the days following the stock price dropped. In
4 general, during this period the stock price remained around
5 -- it ranged from around three dollars to maybe a little over
6 five dollars at some point.

7 Q Now, I would like to direct your attention to the dates
8 December 27 and 28, 2012 on that chart. On those dates did
9 you identify trading by Timothy Pierotti?

10 A Yes.

11 Q What was his trading activity?

12 A He sold shares.

13 Q Approximately how many?

14 A In total, both days?

15 Q On each day, approximately how many?

16 A Around nineteen thousand one day, twenty-four thousand
17 the next.

18 Q Was that according to this chart a large portion of the
19 volume on that date?

20 A Yes.

21 Q What happened to the closing price on the days of those
22 sales?

23 A The price dropped.

24 Q What was the lowest closing price you identified during
25 this time period?

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1 A It was less than three dollars.

2 Q Was it on December 28, 2012?

3 A Yes.

4 Q Now, in the week following December 28, 2012, did you see
5 any of the individuals in the green box, the select accounts,
6 trading in Retrophin shares?

7 A No, no.

8 Q When was the next day that you saw trading by members of
9 the select account?

10 A January 8.

11 Q You see on January 2, 2013, that there was a trade by
12 Mr. Pierotti?

13 A Yes.

14 Q After that trade when was the next trade that you
15 identified for Mr. Pierotti?

16 A January 30, 2013.

17 Q Did Mr. Pierotti buy or sell on that date?

18 A He sold.

19 Q During the period of time identified in this chart,
20 December 17, 2012 to February 28, 2013, did the individuals in
21 the select accounts and Mr. Pierotti buy more stock or sell
22 more stock?

23 A They sold more.

24 Q By a lot?

25 A Yes.

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1 Q And other than Martin Shkreli did anybody buy shares?

2 A Yes.

3 Q Who?

4 A Kevin Mulleady.

5 Q Were you able to identify instances where Mr. Mulleady
6 bought and sold shares on the same day?

7 A Yes.

8 Q Approximately how many times?

9 A Around three times.

10 Q On those days did Mr. Mulleady purchase more than he sold
11 or did he purchase more that he bought?

12 MS. DENERSTEIN: Can we have the date, please?

13 THE COURT: Please break it down by dates.

14 Q Do you have anything that would refresh your recollection
15 on dates?

16 A I recall.

17 Q Okay.

18 A January 8, 2013; January 15, 2013; January 24, 2013.

19 Q On those three dates did Mr. Mulleady buy some more
20 shares than he purchased or sell more shares -- I withdraw
21 that question.

22 On those dates did Mr. Mulleady buy more shares or
23 sell more shares.

24 A He sold more shares.

25 Q What, if anything, did you notice about the price at

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1 which Mr. Mulleady purchased and sold shares on those three
2 days?

3 A He sold for less than he bought. He bought at a higher
4 price than what he sold it.

5 Q What does that mean?

6 A It doesn't really make economic sense.

7 Q What effect, if any, would there be on the liquidity of a
8 stock if somebody purchased and sold on the same day?

9 A Well, it would --

10 MS. DENERSTEIN: Objection.

11 MR. PITLUCK: Generally.

12 THE COURT: All right. So just generally in the
13 market, if somebody buys and sells on the same day?

14 MR. PITLUCK: Yes.

15 Q What would be the effect on the liquidity of a stock?

16 MS. DENERSTEIN: Objection.

17 THE COURT: Overruled.

18 A There would be more volume. Liquidity refers to volume,
19 to the ease at which you're able to buy and sell shares. So
20 if you have someone buying and selling, there's going to be
21 more volume.

22 Q Now, we looked at the share volumes a moment ago and in
23 your experience was Retrophin a heavily traded stock during
24 this time period?

25 A No. It was thinly traded.

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1 Q What does that mean thinly traded?

2 A There were not a lot of shares that were traded.

3 THE COURT: Is there a definition of heavily traded
4 and thinly traded?

5 Q Is there an exact definition?

6 A There's no exact definition. But you know, some big
7 companies on the NASDAQ trade millions of shares a day. So
8 that's heavily traded. And here just from my experience
9 shares some days barely 5,000 shares traded. So it's a very
10 thinly traded stock at this time period.

11 Q What's the importance, if any, on the Over The Counter
12 Markets to a trading volume of a stock?

13 MS. DENERSTEIN: Objection.

14 THE COURT: Overruled.

15 A Well, it informs the public that there's an interest in
16 this company, that there's a market for the stock. It also
17 can have an effect on the price.

18 Q Generally, what's the relationship between the price and
19 volume of a stock?

20 A Well, the price of a stock can depend on how many shares
21 are available to be traded. Under normal market conditions it
22 operates under the principle of supply and demand. So say you
23 have a stock and there's a really high demand for it, a lot of
24 people want to buy it for whatever reason, it's a good
25 company, but there's not a lot of shares that are available to

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1 be traded, in that instance generally you would see the price
2 would increase.

3 And, on the other hand, if you have a stock and
4 there's an excess of supply of shares and not a lot of
5 interest in buyers, generally the price would decline.

6 Q So other things remaining equal, what's the effect on
7 price if there are less shares available for sale in the
8 market?

9 MS. DENERSTEIN: Objection.

10 THE COURT: Overruled.

11 A Well, there's more of a chance that the price will remain
12 stable.

13 Q So based on that, generally, I guess it is beneficial for
14 a controlling shareholder to limit the amount of the shares
15 available for sale?

16 A Yes.

17 Q Why?

18 A Because then you have less likelihood that the share
19 price can decline if there's too much stock in the market and
20 not as much interest.

21 Q Did you compare the trading activity for the select
22 accounts in green and Tim Pierotti, those two accounts
23 together, and compare it to the total trading of Retrophin
24 stock over this time period that's on Government's Exhibit
25 995?

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1 A Yes.

2 Q And how did you make that comparison?

3 A I added up all the shares that were traded by these
4 parties and then added up the total volume of shares.

5 Q What, if anything, did you determine from that
6 calculation?

7 A That these select accounts and Tim Pierotti accounted for
8 67.7 percent of the market activity during this time.

9 Q So those accounts accounted for over two-thirds of the
10 market activity during this time?

11 A Yes, that's right.

12 Q This exhibit 995 focuses on December 17, 2012 to February
13 28, 2013, correct?

14 A Yes.

15 Q Did you review the trading in Retrophin shares over a
16 longer period of time?

17 A Yes.

18 Q Let's just show you Government's Exhibit 992, which is in
19 evidence, tab 10 in your binder?

20 Can you just explain for the jury what's in this
21 chart.

22 A Sure.

23 This is a daily closing price and share volume for
24 Retrophin from December 17, 2012 through September 30, 2014.

25 Q And can you just compare the 2013 and 2014 time periods

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1 as it relates to volume and price?

2 A Sure. From the period of December 17, 2012 through the
3 end of 2013, the price is relatively stable. It varies from
4 three dollars up to maybe eight dollars -- less than ten
5 dollars and the volume is low. But once you get into 2014 the
6 volume increases substantially and the price also increases.

7 Q What, if anything, happened in 2014 that you testified to
8 earlier that would explain that change in price and volume?

9 A Well, the company became -- started trading on the
10 NASDAQ and there was also the registration statement, a
11 registration statement that went into effect at that time from
12 the private placement.

13 Q What was the highest share price you identified during
14 this time period, approximately?

15 A Twenty-three dollars.

16 Q Is that in 2014?

17 A Yes.

18 MR. PITLUCK: Your Honor, can I have one moment,
19 please?

20 THE COURT: Yes.

21 (Pause.)

22 MR. PITLUCK: I have nothing further, your Honor.

23 THE COURT: All right. Would the jurors like a
24 mid-morning break before we start the cross-examination?

25 All right. Let's take a few minutes and, please,

1 don't talk about the case. We will come and retrieve you
2 soon.

3 Ma'am, you can also step down, if you would like to
4 take a break.

5 (Jury excused.)

6 (Witness excused.)

7 THE COURT: All right.

8 Let's take a few minutes. Thank you.

9 I'm going to go and call Juror No. One's employer
10 and I'll report back.

11 (Recess taken.)

12 (In open court; jury not present.)

13 THE COURT: Have a seat. So I did speak to Juror
14 No. One -- one of the supervisors, the director of services.
15 He didn't have an answer for me, a clear answer, but he said
16 he would find the right person in human resources to give me
17 some more feedback.

18 What Juror No. One has been doing is going into the
19 office whenever she is not on trial with us and trying to make
20 up shifts and he said that that arrangement would be
21 acceptable. As we know in early December we will be going
22 five days, every day for the first two weeks of December. So,
23 the question is whether she can make up the time and money on
24 the weekends. And he'll be getting back to me on that. I'll
25 report as soon as I hear something.

Oremland - cross - Denerstein

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1 MR. DUBIN: Thank you, your Honor.

2 THE COURT: Are we ready to bring in the jury now?

3 MR. PITLUCK: Yes, your Honor.

4 I'll advise the jury that we will dismiss them today
5 at 4:30.

6 MR. PITLUCK: Thank you, your Honor.

7 THE COURT: Ms. Denerstein, do you think we should
8 try to get through the lunch hour or will you need to have a
9 break in between? I'm not sure how much cross-examination you
10 have. We can go until 1:00 o'clock.

11 MS. DENERSTEIN: Okay. Let's try it.

12 THE COURT: Thank you.

13 (Pause.)

14 (Jury present.)

15 THE COURT: All right. All jurors are present.
16 Please, have a seat. You may commence your cross-examination.
17 Thank you.

18 CROSS-EXAMINATION

19 BY MS. DENERSTEIN:

20 Q Good morning, Ms. Oremland.

21 A Good morning.

22 Q I want to make this absolutely clear: You don't know
23 Evan Greebel?

24 A No.

25 Q You've never talk to Evan Greebel?

Oremland - cross - Denerstein

5765

1 A No.

2 Q You've never even probably seen him before?

3 A No.

4 Q And you have no idea what Evan Greebel knew or didn't
5 know about any of the stock transactions that you have
6 testified about today?

7 A That's right.

8 Q And you have no idea what Martin Shkreli told him or
9 didn't tell him about any reason for any stock transfers,
10 correct?

11 A Yes.

12 Q In truth, you have absolutely no idea what Martin Shkreli
13 told Evan Greebel about anything?

14 A Yes.

15 Q Can we please put up Government's Exhibit 990.

16 The government directed you to analyze the
17 individuals' accounts on this chart, correct, the trading?

18 A I started in the transfer agent records that these were
19 the recipients of the shares.

20 Q Then you went on in your chart 922, 995 to analyze some
21 of their trading, correct?

22 A In my exhibit with the price and volume.

23 MS. DENERSTEIN: Do you want to give us the tab?

24 MR. PITLUCK: Yes. It is tab eleven.

25 Q Tab eleven?

Oremland - cross - Denerstein

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1 A Yes.

2 Q So Kevin Mulleady, three hundred fifty thousand shares of
3 free trading stock, correct?

4 A Yes.

5 Q Thomas Fernandez, 300,000 shares of free trading stock?

6 A Yes.

7 Q Marek Biestek, 300,000 shares of free trading stock?

8 A Yes.

9 Q Tim Pierotti, three hundred fifty thousand shares of free
10 trading stock?

11 A Yes.

12 Q Claridge capital three hundred fifty thousand free
13 trading shares of stock?

14 A Yes.

15 Q Andrew Vaino, 250,000 shares of free trading stock?

16 A Yes.

17 Q Edmund Sullivan, 100,000 shares of free trading stock,
18 correct?

19 A Yes.

20 Q Evan Greebel's name is not on that chart at all, is it?

21 A No.

22 Q In fact, Evan Greebel's name doesn't appear on any of
23 your charts, isn't that correct?

24 A That's right.

25 Q You also have never spoken to any of those individuals on

Oremland - cross - Denerstein

5767

1 990, correct, that you have listed?

2 A I have not.

3 Q You don't know them, correct?

4 A I do not.

5 Q And you don't know why they chose to do what they did or
6 didn't do with respect to any trades?

7 A That's right.

8 Q Again, Mr. Greebel's name does not appear anywhere on 990
9 because he did not receive any of the free trading stock;
10 isn't that correct?

11 A That's right, not to my knowledge.

12 Q Didn't you testify earlier today about where the trades
13 went that are listed on this, do you remember that testimony
14 about Troy Fearnow and another woman's name?

15 A Yes.

16 Q Those names are not on there either?

17 A No.

18 Q So Evan Greebel didn't receive any of those free trading
19 shares, correct?

20 A Yes.

21 Q Let's talk briefly about your job. You work at FINRA?

22 A Yes.

23 Q And FINRA is overseen by the Securities & Exchange
24 Commission?

25 A Yes.

Oremland - cross - Denerstein

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1 Q And the SEC is a government agency?

2 A Yes.

3 Q And FINRA is accountable to the SEC?

4 A FINRA is overseen by the SEC.

5 Q The SEC is their regulator?

6 A Yes.

7 Q You are an attorney at FINRA?

8 A Yes.

9 Q And you've worked there for 16 years, the majority of
10 your legal career?

11 A Yes.

12 Q And you've worked in your current group for about eleven
13 years?

14 A Yes.

15 Q It's called the Criminal Prosecution Assistance Group,
16 correct?

17 A Right.

18 Q Your responsibilities involve assisting the government in
19 prosecuting cases?

20 A Yes.

21 Q You do not conduct investigations?

22 A I don't.

23 Q Your group is dedicated to assisting the government in
24 securities related investigations and prosecutions, correct?

25 A That is right.

Oremland - cross - Denerstein

5769

1 Q And you've testified many times before in prior cases on
2 behalf of the prosecution?

3 A Yes.

4 Q And that's your job?

5 A That's part of my job is to testify at trials.

6 Q Now, in preparing for your testimony here today, you
7 conducted the analysis that the government told you that they
8 wanted you to conduct, correct?

9 A Yes. I conducted analysis at the government's request.

10 Q So the government told you what dates to analyze,
11 correct?

12 A Yes. They gave a general idea of the time frame.

13 Q The government told you which select accounts to analyze?

14 A Yes.

15 Q And you limited your analysis to what the government
16 asked you to do?

17 A Well, yes, in some ways. But in -- on my review I had
18 input as well to the time frame that I looked at.

19 Q But that input was really based on your analysis of the
20 data, some of which was provided by the government, blue
21 sheets, the Bloomberg charts, which you prepared and the other
22 SEC filings you reviewed?

23 A Yes.

24 Q And the transfer agent records?

25 A Right.

Oremland - cross - Denerstein

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1 Q So you did what the government asked?

2 A Yes.

3 Q And you limited the time period from December 17 to
4 February 28, 2013; isn't that correct?

5 A For this -- for one portion of my analysis, yes.

6 Q So let's turn to that. Let's show 995. On this chart
7 the time period, December 17 to February 28, 2013, correct?

8 A Yes.

9 Q Okay. Can you publish that next to 992. Can you
10 highlight what period of time this 995 covers on 992. We're
11 going to go to February 28, 2013?

12 So you covered a very small period of time of the
13 trading, correct, in this chart?

14 A I covered this period of time trading in the chart, yes.

15 Q This period of time is much more limited -- let's flip
16 back to 992 -- than the period in 992, correct, which goes
17 all the way to September 2014, correct?

18 A Yes.

19 Q And let's go back. So the period you covered is up to
20 February 28?

21 Can you Mr. Carter, highlight that in yellow,
22 please?

23 (Continued on next page.)
24
25

Oremland - cross - Denerstein

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1 BY MS. DENERSTEIN: (Continuing)

2 Q Okay. So my point is you analyzed trades for a very
3 select period of time on this chart, February, up to
4 February 28th from December 17th, 2012.

5 A Yes.

6 Q But 992 goes way past that, all the way to
7 September 30th, 2014?

8 A Yes.

9 Q But we don't have the analysis for that time period, do
10 we?

11 A No. I focused on that time frame because it really was
12 the most critical time frame for this company. This was a
13 startup company, it had a reverse merger and then this was the
14 time before it secured its financing. It got its private
15 placement in February and that was a pretty significant amount
16 of funding.

17 Q Ms. Oremland, I understand, but going to January, didn't
18 something tremendous happen in January of 2014 to this
19 company --

20 MR. PITLUCK: Objection to the form.

21 Q -- that was incredibly important? Tremendous? Big?

22 THE COURT: I will allow the question.

23 A In January of 2014, as I testified before, it went on,
24 the company moved on to the NASDAQ.

25 Q That's the second largest exchange in the world, correct?

Oremland - cross - Denerstein

5772

1 A It's a large exchange.

2 Q So it's not the second largest or you don't know?

3 A I'm not sure. I think it is.

4 Q It's a huge exchange and any company that is going to be
5 publicly listed -- and if we can point to January of 2014,
6 just that time frame -- that is a big deal, wouldn't you agree
7 with that? Yes or no.

8 A It is -- what do you mean, it's a big deal?

9 Q For a startup company to become public and meet the
10 requirements to be able to list it on NASDAQ, which you said
11 was substantial, is a big deal?

12 A It's very positive for this company, yes.

13 Q Isn't it fair to say that would be an important time
14 period for this company and for the stock?

15 A Yes. At this time it's trading on the NASDAQ, it's doing
16 really well. There's a market. There's a lot of people who
17 want to buy and sell the stock. It's quite different from
18 what we saw in the beginning of the time period where it's
19 very, very thinly traded. There wasn't financing yet. It
20 was, it was just a startup from a reverse merger. So, it's
21 like -- it's comparing apples and oranges.

22 Q Doesn't your chart compare it?

23 In other words, you're showing daily share price
24 between December 17th -- you're showing share volume between
25 December 17, 2012, all the way to September 30, 2014, correct?

CMH

OCR

RMR

CRR

FCRR

Oremland - cross - Denerstein

5773

1 A Yes.

2 Q And you're also showing the volume during that same time
3 period, correct?

4 A Yes.

5 Q And so you're not saying that your chart's not important,
6 are you?

7 A No, I'm not. I'm saying that this is a different chart.
8 This is showing all of the trading in the company for the time
9 period involved at this time, this case.

10 Q Yes or no: This chart does not show the selected
11 accounts activity during any of this time period, does it?

12 A That's right.

13 Q That --

14 A This is purely Bloomberg pricing line data through that
15 whole --

16 MS. DENERSTEIN: Your Honor, I'm going you to
17 instruct the witness just to answer "yes" or "no."

18 THE COURT: All right. When the question is posed
19 to you as a "yes" or "no" question, try to answer "yes" or
20 "no" or if you can't do that, let the lawyer know that you
21 can't answer "yes" or "no."

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Okay. Did you want to repose your
24 question or not?

25 MS. DENERSTEIN: No.

Oremland - cross - Denerstein

5774

1 Q So let's, let's just talk about one other thing while
2 we're looking at this chart on 992.

3 The share volume goes up tremendously after the
4 company is publicly traded, correct?

5 There are way more shares traded once the company is
6 listed on NASDAQ, correct?

7 A That's right.

8 Q I mean, look at the highest point, I think, is in April,
9 if I can see, 2014, and look at -- what's the share volume, if
10 you can tell? I know it's hard to read.

11 A You're pointing to the price.

12 MS. DENERSTEIN: The line underneath, Mr. Carter,
13 the straight line.

14 A It is over 3 million shares.

15 Q Okay. Now, let's go to the first half of the time period
16 of the chart. So, 3 million shares, trades, share volume. A
17 lot of action on that particular day for this company?

18 A Yes.

19 Q And if you go to the beginning time period, let's go to
20 December 17, 2013 through January 2013, you can't even see the
21 share volume on the chart, correct?

22 A Yes.

23 Q And that's because there was far fewer trades occurring
24 during that time period, correct?

25 A Yes.

Oremland - cross - Denerstein

5775

1 Q And that's, in part, because it wasn't listed on a public
2 exchange so it's not as readily accessible as after
3 January 2014 when it becomes public?

4 A It was public at that time. It was traded on the
5 over-the-counter QB. That's a public market.

6 Q Correct. But that public market is not the same or
7 nearly as well known as NASDAQ or the New York Stock Exchange,
8 correct?

9 A It's one of the other markets where stock is traded. I
10 can't speak to whether it's well known or not.

11 Q Okay. So let's talk about, let's talk about blue sheets.
12 You testified about the accuracy of blue sheet data,
13 correct? You testified that the blue sheets contain all of
14 the trades?

15 A The blue sheets -- I can't answer "yes" or "no."

16 THE COURT: She can't answer "yes" or "no."

17 Q Your testimony this morning was "the blue sheets contains
18 all of the trades." Do you recall that testimony? Yes or no.

19 A Yes, I -- yes, it contains all the trades from the
20 clearing firms --

21 Q And let's --

22 A -- for a stock for a particular period of time.

23 Q And you relied on the blue sheets for part of your
24 analysis, correct?

25 A Yes.

Oremland - cross - Denerstein

5776

1 Q And you know that the blue sheet data provides regulatory
2 agencies with the ability to analyze a firm's trading,
3 correct?

4 A Yes.

5 Q And you know that firms are expected to provide complete
6 and accurate and timely blue sheet data in response to
7 regulatory requests, correct?

8 A Yes.

9 Q And you know that FINRA tells clearing brokers and the
10 public that they use and rely on blue sheet data to identify
11 individual insider trading, for example?

12 A Blue sheet data is used in insider trading
13 investigations.

14 Q And actually, FINRA fines firms for failing to provide
15 complete and accurate blue sheet trade data, is that correct?

16 A Yes.

17 Q And let's just talk about who maintains the blue sheet
18 data. It's the SEC, isn't that correct?

19 A Well, it depends on who requests it. The SEC can request
20 blue sheets and FINRA can as well.

21 Q And in this case, the blue sheet data was maintained by
22 the SEC, isn't that correct?

23 A Yes.

24 Q And it was provided to you by the government, correct?

25 A Yes.

Oremland - cross - Denerstein

5777

1 Q So let's go to your chart, 995.

2 Okay. So let's look at a particular day -- well,
3 let's first discuss for your total share volume on this chart.

4 You rely on trading data maintained by Bloomberg,
5 correct?

6 A Yes.

7 Q And so the top of each bar reflects that, correct?

8 A The top of each bar reflects the total number of shares
9 traded.

10 Q And that's based on the Bloomberg data, correct?

11 A Well, in the bar, it distinguishes from red, purple
12 green. The red is the rest of the volume. The purple is
13 priority. The green is the select accounts.

14 Q Right, but you got the top of the chart -- your highest
15 point, you testified, was from the Bloomberg data, correct?

16 So, you decided that, for example, on December 21st,
17 that the volume was 2,100. That was the total you chose from
18 the Bloomberg -- that was what was reported on Bloomberg,
19 correct?

20 A That's the Bloomberg reported volume.

21 Q Right. And then what you did -- and you used the blue
22 sheet data for the green and purple portion of the bars,
23 correct?

24 A Yes.

25 Q And you took the 2,100 and you did the difference, right?

Oremland - cross - Denerstein

5778

1 The bar -- when you went from, the red begins -- you added
2 blue sheet data in green to blue sheet data in purple and then
3 you subtracted from the red?

4 A Right.

5 Q Okay. So you're using two different sources of data on
6 this chart?

7 A Yes.

8 Q And the one that has the more detailed information about
9 who is actually doing what that you relied on in this chart is
10 the blue sheets, correct?

11 A Yes.

12 Q Now, I want you to take a look at Government Exhibit 955
13 in evidence. I'm sorry, I don't know the tab. If Mr. Pitluck
14 can provide it, I would appreciate it.

15 MR. PITLUCK: It's tab six, Your Honor.

16 Q Do you have tab six?

17 A Yes.

18 Q Thank you, Ms. Oremland.

19 Now, this is the chart that shows, in evidence, that
20 shows the daily closing price and share volume of Retrophin.
21 So you took the numbers from this chart on the share volume
22 column and transferred it on to Government Exhibit 995, right?

23 A Yes.

24 Q Okay. Now, if you look on this, let's go to December
25 21st. It's not too far in.

Oremland - cross - Denerstein

5779

1 So, the share volume on that day is 2,100, correct?

2 A Yes.

3 MS. DENERSTEIN: Okay. So now let's go to 995.

4 995, sorry, Mr. Carter. It's confusing, not 955.

5

6 Q Okay. Great. Can I direct your attention to December
7 21st? Okay. If you draw a line across on December 21st,
8 you're at the 2,100, correct?

9 A Yes.

10 Q And that's almost halfway to the 5,000 line?

11 A Right.

12 Q And that share volume, again, comes from the Bloomberg
13 table that we just looked at in Government Exhibit 955,
14 correct?

15 A Yes.

16 Q And, again, the green activity, the green portion of the
17 bar did not come from the Bloomberg table, correct?

18 A Right.

19 Q It came from the blue sheet data that was provided to you
20 by the government, correct?

21 A Yes.

22 Q And that was maintained by the SEC, correct?

23 A Yes.

24 Q And so your blue sheets, let's go to -- the blue sheets
25 contain all of Retrophin's trading data for a period, right?

Oremland - cross - Denerstein

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1 A Right.

2 Q They show every buy, every sale, every short,
3 cancellations, date of the trade, price per share, number of
4 shares and identifying information about an account holder
5 making a trade?

6 A Yes.

7 Q So, you used the blue sheets to create the, again, the
8 green portion of this chart for the select accounts of Martin
9 Shkreli, Kevin Mulleady, Andrew Vaino and Marek Biestek,
10 correct?

11 A Yes.

12 Q Okay. So, and you thought they contained accurate
13 information; that's why you relied on it, correct?

14 A Yes.

15 Q Okay.

16 MS. DENERSTEIN: Your Honor, may we publish
17 Government Exhibit 950 in evidence which is the blue sheet
18 data?

19 THE COURT: Yes.

20 Q This is in evidence, the blue sheet data that covers the
21 period, maintained by the SEC that covers the period from
22 November 14, 2012 to February 20, 2013, correct? It's in the
23 stipulation in any event.

24 The SEC, again, requires companies to submit
25 accurate blue sheet data, correct?

Oremland - cross - Denerstein

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1 A Requires clearing firms.

2 Q Clearing firms to submit accurate blue sheet data,
3 correct?

4 A Yes.

5 Q Ms. Oremland? I'm sorry. I didn't hear your last
6 answer.

7 A I said yes.

8 Q Now, this is laid out in a Microsoft Excel spreadsheet,
9 right? It's the same exhibit that you looked, reviewed.

10 A Right.

11 Q And column A -- Mr. Carter, please zoom in on column A --
12 is the date of a trade, correct?

13 A Yes.

14 Q And volume B is the buy/sell description?

15 A Yes.

16 Q Column C is the price?

17 A Yes.

18 Q And then if we go to column D, it lists the quantity of
19 shares, correct?

20 A Correct.

21 Q And then if you go, continue all the way over to J,
22 that's the account holder, correct?

23 A Yes.

24 Q And Microsoft Excel, as you know, you can search it and
25 filter it and do lots of different things with it, correct?

Oremland - cross - Denerstein

5782

1 A Yes.

2 Q So, if we filter A, the date, to show only December 21,
3 2012 --

4 MS. DENERSTEIN: Can you please do that, Mr. Carter?
5 Can we filter for December 21, 2012?

6 Q And if you -- and if you see, there are buys between row
7 88 and row 109, correct?

8 A Yes.

9 Q And if you calculate the sum of all the shares bought on
10 December 21st, that total is right at the bottom. First, it
11 says "Average" and then it says "Count 22," it's kind of tiny,
12 and then it says "Save," in the right-hand corner?

13 A You're just adding up all the buys in that column.

14 Q Correct. And it's 5,800, is that correct?

15 A That's what that says.

16 Q Well, it's blue sheet data that the parties have
17 stipulated to as accurate?

18 MR. PITLUCK: Objection, Your Honor. The -- it's
19 not the data. It's the sum that I think Ms. Oremland is
20 saying that's what it says.

21 Q Are you, Ms. Oremland, it's -- we can certainly give you
22 a calculator to add them if that's what you're requesting.

23 A No.

24 Q So the summary reflected on Government Exhibit 950 is
25 5,800, correct?

Oremland - cross - Denerstein

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1 A Yes.

2 Q And you said this represents the buys.

3 MS. DENERSTEIN: Let's do the sales there, Carter.

4 Q And the sum for the sale is 5,000?

5 A Yes.

6 Q Okay. Let's go back to your Exhibit 995.

7 So, the blue sheet data shows a share volume of
8 5,000 for December 21, 2012, correct?

9 A Yes.

10 Q And that's not --

11 MS. DENERSTEIN: So, can we draw a line on 50,
12 please, go up from December 21st, straight, and then go over
13 to the left, please, to the 5,000:

14 Q So this number is much greater than the number that you
15 used on your chart, correct?

16 A Yes.

17 Q Okay. It's more than double the number you used,
18 correct?

19 A Yes.

20 Q Okay. Let's go to -- so you relied on one set of data to
21 show total share volume, but you relied on a completely
22 different set of data to calculate the share volume for the
23 select accounts, right?

24 A Right. As I explained, the blue sheets contain market
25 maker data so that's why you see a double count.

Oremland - cross - Denerstein

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1 Q You're speculating. You didn't check that, did you?

2 A Yes, I, I reviewed the blue sheet data.

3 Q And you know that each one of those is a market maker?

4 A I know that they were trades and they were market maker
5 firms that put together the buyers and the sellers and what's
6 reported to the public where it was the actual trades that
7 were transacted and the other trades were the intermediary
8 trades between the market makers and the trading firms in
9 order to connect the buyers and the sellers together.

10 Q But you just testified that the blue sheets provide
11 regulatory agencies with the ability to analyze a firm's
12 trading activity, isn't that correct? Yes or no.

13 A Yes.

14 Q So, you're picking and choosing what you think you should
15 be using from the blue sheet data, correct?

16 A No.

17 Q You chose --

18 A I --

19 Q Wait. You said no. Thank you.

20 You chose to only use the volume from Bloomberg
21 because that's what you believe is a better thing, not because
22 you checked every trade?

23 A Bloomberg is the source of data --

24 Q Yes or no.

25 A -- that's relied upon by the public. That's what the

Oremland - cross - Denerstein

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1 public sees.

2 Q Okay. So you thought the fact that the public relied on
3 the data, that that's why you chose Bloomberg data, correct?
4 Yes or no.

5 A No, I always use Bloomberg data. That's the source of
6 the market volume of shares traded.

7 Q It's, it's also -- the blue sheets are also a reflection
8 of the shares traded, correct?

9 A The blue sheets show all of the trades, but that data is
10 not available to the public.

11 Q Correct. But it doesn't mean it doesn't exist or it
12 didn't happen, correct?

13 A Yes, sure. There has to be market makers that connect
14 the buyers and the sellers. That's how the market works.

15 Q And the chart doesn't -- and isn't it misleading to use
16 one set of data for the green bars for the select accounts to
17 compare it to another set of data for the share volume? Yes
18 or no.

19 A No.

20 Q And didn't you do it this way because you thought you
21 made it look better for the government? Yes or no.

22 A No.

23 MS. DENERSTEIN: And let's just go back to the blue
24 sheets on Government Exhibit 950 and if we sort for column
25 J -- on December 21st, please, can we sort for Andrew Vaino.

CMH

OCR

RMR

CRR

FCRR

Oremland - cross - Denerstein

5786

1 Q So, on December 21st, Andrew Vaino had two sales and he
2 sold 500 shares, correct?

3 A Yes.

4 Q And 500 shares on your chart represents, going back to
5 995, almost 25 percent of the 2,100 share volume on that day,
6 correct?

7 A Were there other -- I'm not, I don't remember if there
8 were other select accounts that traded that day. I don't know
9 if Vaino was the only one.

10 Q I'm just talking about the Vaino amount which was 500
11 shares. I'm sorry. It was 1,000 shares.

12 Let's go, let's go back to that same day,
13 December 21, 2012.

14 THE COURT: Is this Government Exhibit 950 we are
15 looking at?

16 MS. DENERSTEIN: Yes, Government Exhibit 950.

17 Can you sort? Can you go across?

18 Q So, in column D, Mr. Vaino, it's a total of 500, correct?

19 A Yes.

20 Q Okay. And how much -- 500 represents approximately
21 25 percent of the 2,100 share volume on your chart, correct?

22 A Yes.

23 Q And on that same day, can we sort for -- so, we're at
24 December 21, 2012, Marek Biestek and he sold, if you go down
25 to the sum in the corner, it's 1,000 total shares on

Oremland - cross - Denerstein

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1 December 21st?

2 A Yes.

3 Q And that represents almost 50 percent of the share volume
4 if you go back to your Government Exhibit 995, correct?

5 A Yes.

6 Q And if you compare that to the blue sheet data, the total
7 share volume would be 5,800, correct, or 5,000?

8 MR. PITLUCK: Objection to the form.

9 THE COURT: Try to rephrase that, Ms. Denerstein,
10 please.

11 Q If you compare the sales of Mr. Vaino and Mr. Biestek to
12 the blue sheet data, they are a smaller portion of the sales
13 that day, correct? Yes or no.

14 MR. PITLUCK: Objection to the form, Your Honor.

15 THE COURT: A smaller percentage of the overall, is
16 that what you are asking?

17 MS. DENERSTEIN: Yes.

18 THE COURT: Do you just want to rephrase the
19 question, please?

20 Q If you include the blue sheet data, it no longer makes up
21 25 percent, correct? The percentage is much lower? Yes or
22 no.

23 A If you include all the intermediate trades, that would be
24 like double counting.

25 MS. DENERSTEIN: Your Honor, I'm going to ask you to

Oremland - cross - Denerstein

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1 direct the witness to answer "yes" or "no," please.

2 THE COURT: All right. You will have an opportunity
3 to explain further. If she asks you for a "yes" or "no"
4 answer, the response is either "yes," "no" or you can't answer
5 it "yes" or "no."

6 THE WITNESS: Okay.

7 Q Okay. Supply and demand for a stock is not always
8 balanced, correct?

9 A I don't understand your question.

10 Q Sometimes there is more demand to buy shares of a stock,
11 correct, than there is supply?

12 A Yes.

13 Q Sometimes there's more supply from people wanting to sell
14 their shares than there is to demand, correct?

15 A Yes.

16 Q And buying and selling are distinguishable; they're
17 different?

18 A Yes.

19 Q So, let's go back to Government Exhibit 995.

20 The green portions of the bars represent share
21 volume from the select accounts from the blue sheets, correct?

22 A Yes.

23 Q And so now it's for Martin Shkreli, Kevin Mulleady,
24 Andrew Vaino and Marek Biestek, correct?

25 A Yes.

Oremland - cross - Denerstein

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1 Q And if you look at, again, December 21st, your green bar
2 does not indicate who did anything or what they did, isn't
3 that correct, for the select accounts?

4 A I'm not sure I understand your question.

5 Q Your chart does not make clear that on December 21, 2012,
6 two select accounts did something that day, correct?

7 A Right.

8 Q Only two of the select accounts that you analyzed did
9 anything and on that particular day; Andy Vaino and Marek
10 Biestek sold, correct?

11 A Yes.

12 Q And they sold shares, but your chart doesn't distinguish
13 that, does it?

14 A It just shows their activity.

15 (Continued on next page.)

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Oremland - cross - Denerstein

5790

1 BY MS. DENERSTEIN:

2 Q It doesn't show their activity. It just shows the share
3 volume, correct?

4 A Yes. It shows their volume.

5 Q As compared with the purple, if you go to December 28,
6 just the purple portion of the chart.

7 That shows the activity for one individual, correct.

8 A Yes.

9 Q Mr. Pierotti?

10 A That's right.

11 Q So you chose to break out and show what Mr. Pierotti did
12 in one bar, the purple bar, correct?

13 A Yes.

14 Q But you combined everything of the select accounts in the
15 green bar?

16 A Yes.

17 Q And in the green bar you don't explain that on December
18 21 Kevin Mulleady didn't do anything, he did not buy or sell?

19 A Correct.

20 Q That Martin Shkreli didn't do anything, he didn't buy or
21 sell?

22 A Right.

23 Q And you don't make clear that Andrew Vaino or Marek
24 Biestek weren't buying?

25 A Right.

Oremland - cross - Denerstein

5791

1 Q If I'm looking at the chart I have no idea whether the
2 select accounts are buying or selling, correct?

3 MR. PITLUCK: Objection to the form.

4 MS. DENERSTEIN: I can take out I have no idea.

5 THE COURT: Okay. Just rephrase it without that.

6 Q If you're looking at the green bar you have no idea what
7 the select accounts, Martin Shkreli, Kevin Mulleady, Andrew
8 Vaino and Marek Biestek are doing, correct?

9 A Yes.

10 Q And you don't know whether they are buying, correct?
11 Sorry.

12 A Yes.

13 Q You don't know whether they are selling, correct?

14 A Yes.

15 Q And you don't know whether they are holding the stock and
16 doing nothing, correct?

17 A No. If it's green it means they traded.

18 Q No. But it doesn't mean all four traded, correct?

19 A It means one -- one in the group traded.

20 Q Where is that written on this chart?

21 A In the right corner.

22 Q Where does it say one of them are trading on this chart?

23 A It indicates that the select accounts are comprised of
24 the individuals.

25 Q But isn't this kind of misleading to combine the select

Oremland - cross - Denerstein

5792

1 accounts without distinguishing whether they are buying or
2 selling or not doing anything at all?

3 A No.

4 Q You could have done that, you had the data, correct?

5 A Yes.

6 Q But you chose not to, correct?

7 A Yes.

8 Q Did the government tell you not to do that?

9 A No.

10 Q You just on your own decided let me combine these four
11 accounts and not display what they are doing as individuals?

12 A Yes.

13 Q And let's compare that to what Tim Pierotti is doing as
14 an individual?

15 A Yes. That was in conjunction with the government
16 request.

17 Q They asked you to break out Tim Pierotti?

18 A Yes.

19 Q And they asked you to make him his own bar but you chose
20 to collapse everybody else?

21 A Yes.

22 Q So to understand this chart and what actually happened on
23 it, you have to go to the date, correct, first, if you want to
24 know what a select account activity did, you would have to go
25 to a particular date, correct?

Oremland - cross - Denerstein

5793

1 A Yes.

2 Q Then you would actually have to go to the blue sheet
3 data, correct?

4 A I don't think I understand your question.

5 Q I'll rephrase?

6 For the select accounts to know what they did on a
7 particular day you can't tell from this chart what they did?
8 You only are showing that trading happened for somebody in the
9 select accounts.

10 A Yes.

11 Q So if you wanted to know what happened on December 28,
12 2012 with the select accounts you'd actually have to go to the
13 blue sheet data, which is in evidence, and look up the trade,
14 correct, for the select account, because if you went to
15 December 28, 2012, then you would know which of the select
16 accounts did anything, Martin Shkreli, Kevin Mulleady, Andrew
17 Vaino, Marek Biestek, you have to go there to figure that out,
18 you can't do it from the chart, right?

19 A Right.

20 Q Just go back to 990 for one minute?

21 Let's look at this for one second. Now, there are
22 three of these select accounts that don't trade at all during
23 the time period on 995, correct? They are not part of select
24 accounts?

25 A Yes.

Oremland - cross - Denerstein

5794

1 Q Thomas Fernandez didn't trade all between 12-17 and
2 February 28, 2013, correct?

3 A Yes.

4 Q Claridge Capital didn't trade at all between December 17,
5 2012 to February 28, 2013, correct?

6 A Yes.

7 Q Edmund Sullivan didn't trade at all between December 17,
8 2012 and February 28, 2013?

9 A Yes.

10 Q And going back to your chart, again, 995, for the purple,
11 which is Mr. Pierotti, correct?

12 A Yes.

13 Q He only sells, correct?

14 A Yes.

15 Q So on some days in this chart Mr. Pierotti's selling and
16 so are some of the select accounts, correct?

17 A Yes.

18 Q So let's look at January 30, 2013 in Government's Exhibit
19 950. This is January 30. And then let's -- so this is
20 trading activity on January 30, 2013, in the blue sheets,
21 correct?

22 A Yes.

23 Q So let's go -- column A for January 30, 2013, let's
24 filter column A for Kevin Mulleady, please?

25 Okay. So on this date, January 30, 2013, Kevin

Oremland - cross - Denerstein

5795

1 Mulleady buys 100 shares, correct.

2 A Buys 400 shares.

3 Q Total, correct?

4 A Yes.

5 Q And he sells 10,400 shares, correct?

6 A Yes.

7 Q And let's now filter for Andrew Vaino. So on January 30,
8 2013 Andrew Vaino sale is 3500 shares down in the corner,
9 correct?

10 A Yes.

11 Q So on January 30 Andrew Vaino sells 3500 shares, Kevin
12 Mulleady sells 10,400 shares, correct?

13 A Yes.

14 Q And let's filter for Mr. Pierotti, please, and he
15 sometimes spells his name differently?

16 How many shares does -- how many shares does
17 Mr. Pierotti sell?

18 A Well, there's a cancel here. So he sells 6,000 out of
19 this account. There might be --

20 Q Okay. So he sells 6,000 shares on the same day that
21 Andrew Vaino sells 3500 and Kevin Mulleady sells 10,400,
22 correct?

23 A Yes.

24 Q So Kevin Mulleady sells more shares than Timothy
25 Pierotti, correct?

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5796

1 A There might be more than one Pierotti account. Wait.

2 Let me see. Yes, that's right.

3 Q So, again, Kevin Mulleady sells more shares on that day
4 than Timothy Pierotti, correct?

5 A Yes.

6 Q And Kevin Mulleady combined with Andy Vaino to sell more
7 shares that day than Timothy Pierotti, correct?

8 A Yes.

9 Q But, again, of course, if you go back to January 30,
10 2013, your chart on 995, when we get to January 30, 2013, you
11 can't tell who does what in the select account trading
12 activity, correct?

13 A Yes.

14 Q And your share volume that day is, draw a line across, is
15 that about 22,000?

16 A Roughly, yes.

17 Q And Mr. Carter the share volume in the blue sheets for
18 January 30, isolate for all five?

19 So, the sum listed there is 74 thousand -- over 74
20 thousand, correct.

21 A Yes.

22 Q As we discussed that number is different than your
23 number, going back to January 30 on 995? Yes or no.

24 A Yes.

25 Q So Pierotti was not the only one selling shares during

Oremland - cross - Denerstein

5797

1 the limited time period in your chart on Government's Exhibit
2 996, correct?

3 A Yes.

4 Q For example, let's look at Government's Exhibit 950 and
5 filter column J for Andy Vaino.

6 So on January 30, 2013, Andy Vaino sells 3500.

7 Mr. Carter, let's filter for the whole time period.
8 Just put in Andy Vaino's name for the blue sheet data which
9 covers Exhibit 950, which covers November 14, 2012 to February
10 20, 2013.

11 What's the total?

12 A Sixty-seven thousand.

13 Q During this period of time between November and February
14 20, 2013, which the blue sheet data covered, Mr. Vaino sells
15 sixty-seven thousand shares?

16 A Yes.

17 Q Let's just filter column J for this whole time period for
18 Kevin Mulleady. During this time period Kevin Mulleady is
19 buying and selling shares as well, correct?

20 A Yes.

21 Q You can get out of this exhibit, Mr. Carter?

22 Pierotti was not the only one selling shares after
23 the time period that ends in Government's Exhibit 995,
24 correct, ended on February 28, 2013? Trading continued after
25 February 28, 2013?

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1 A Yes.

2 Q Yes?

3 Tim Pierotti continued selling shares after February
4 2013, correct.

5 A I'm not sure.

6 Q Okay. Kevin Mulleady continued selling shares after
7 February 28, 2013?

8 A I don't know.

9 Q Andy Vaino continued selling shares after February 28,
10 2013, correct?

11 A I don't know.

12 Q Marek Biestek also continued selling shares, correct?

13 A I don't know.

14 Q Okay. Now, you reviewed the blue sheet data, correct?

15 A Yes.

16 Q So let's go to Government's Exhibit 951 in evidence,
17 which covers the time period from February 21, 2013 to
18 November 29, 2013. And let's filter for Kevin Mulleady?

19 So he sold 112,961 shares.

20 A Yes.

21 Q During this time period, correct?

22 A Yes.

23 Q And let's filter for the same time period in column J for
24 Marek Biestek?

25 So he on various dates in March 2013 and in February

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5799

1 2013 sells 10,350 shares, correct.

2 A Yes.

3 Q And none of this information is included in Government's
4 Exhibit 995, correct?

5 A Right. This exhibit covers December 17, 2012 through
6 February 28, 2013.

7 Q Actually there's a brief period which the blue sheet data
8 is divided up to February 20?

9 A Yes.

10 Q The bottom line is the select account holders are doing
11 different things on different days, correct? Different
12 trading activity on different days, correct?

13 A Can you clarify your question?

14 Q The select account holders are engaging in different
15 trading activity, if any, on different days? Yes or no.

16 A Yes.

17 Q They are not doing the same thing on each day, select
18 account holders, correct?

19 MR. PITLUCK: Objection to the form, your Honor.

20 THE COURT: Try to rephrase your question,
21 Ms. Denerstein, please.

22 Q Well, on March 6, 2013, Martin Shkreli buys 100 shares,
23 correct?

24 A I don't know.

25 Q On March 6, 2013, Andrew Vaino sells 1,000 shares,

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5800

1 correct?

2 A I don't know.

3 MR. PITLUCK: Objection, your Honor.

4 Q On March 6, 2013, Kevin Mulleady sells twenty-five
5 hundred shares, correct?

6 THE COURT: Go ahead, Mr. Pitluck.

7 MR. PITLUCK: This is an exhibit that the witness is
8 looking at that doesn't cover that time period.

9 MS. DENERSTEIN: It's not on the board. We have
10 this other chart.

11 THE COURT: Can you refer her so she can answer yes
12 or no.

13 MS. DENERSTEIN: Yes. I'm just establishing she
14 doesn't know and I'm going to go back to the Government
15 Exhibit that provides the information, I'll go back now.

16 Q Let's go to Government's Exhibit 951 in evidence. That's
17 the blue sheets for the period February 21 to November 29,
18 2013.

19 Mr. Carter, could we filter for column J for Andrew
20 Vaino, Kevin Mulleady, Marek Biestek and Martin Shkreli.

21 THE COURT: For all dates within that period?

22 MS. DENERSTEIN: Yes. Thank you, your Honor. I'm
23 sorry. Actually I meant to say for March 6, 2013. I
24 apologize.

25 March 6, Martin Shkreli, Andy Vaino, Kevin Mulleady

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1 and Marek Biestek. On the first column there's a buy for 100
2 shares and if you go across to J, that's Martin Shkreli
3 purchasing, correct?

4 A Yes.

5 Q And if you go down there's a sale for 1,000 shares and
6 that is the same day by Andy Vaino, correct?

7 A Yes.

8 Q And if you go to the third, that is a sale of twenty-five
9 hundred shares by Kevin Mulleady, correct?

10 A Yes.

11 Q So on that day Martin Shkreli is buying, Andrew Vaino and
12 Kevin Mulleady are selling, correct?

13 A Yes.

14 Q Selects account holders are selling on different days,
15 correct?

16 A Can you rephrase your question?

17 Q Sure?

18 The select account holders on different days are
19 buying or selling or holding, correct?

20 A I don't understand your question.

21 Q On each day in the blue sheets the select account holders
22 are doing different things, correct?

23 A On every day? I don't understand the question.

24 Q For the example on March 6 of 2013, Kevin Mulleady --
25 Kevin Mulleady sold twenty-five hundred shares, correct?

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5802

1 A Yes.

2 Q That's a different amount from how many shares Andy Vaino
3 sells, correct?

4 A Yes.

5 Q He sells a thousand shares?

6 A Yes.

7 Q And that's Vaino and Mulleady selling 1,000 shares for
8 Andy Vaino and twenty-five hundred for Kevin Mulleady is
9 different than Martin Shkreli buying 100 shares, correct?

10 A Yes.

11 Q And Marek Biestek doesn't trade on that day at all? You
12 remember his name in the blue sheets. We filtered for it. He
13 doesn't come up at all on that day, correct?

14 A Yes.

15 Q So the select account holders on March 6, 2013, are all
16 doing different things, they are selling different amounts,
17 they are buying or they are not doing anything at all on March
18 6, 2013?

19 A Yes.

20 Q I guess it is fair to say that many factors can influence
21 a company's stock price?

22 A Yes.

23 Q Let's go to Government's Exhibit 992 and this is your
24 chart tracking daily closing price and share volume based on
25 Bloomberg data, correct?

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5803

1 A Yes.

2 Q So the stock price changes day-to-day pretty much, fair
3 to say? I'll rephrase?

4 The stock price is based on Bloomberg the chart and
5 whatever dates there it goes up and down over this period of
6 time.

7 A Yes.

8 Q Sometimes it goes up, stock price?

9 A Yes.

10 Q Sometimes it goes down?

11 A Yes.

12 Q I want to show you what's been marked as Defendant's
13 Exhibit 13085 for identification?

14 Ms. Oremland, can you take a look at this.

15 (Pause.)

16 Q Let me know when you are ready.

17 A I'm ready.

18 Q Did this tell you the date about when Retrophin was
19 uplisted to NASDAQ?

20 A It says it includes a date for the offering and it also
21 indicates that it received approval to list on the NASDAQ. I
22 don't see a date for the --

23 Q On the left-hand-top corner can you see the date?

24 A Yes.

25 MS. DENERSTEIN: At this time the defense moves to

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1 offer Defendant's Exhibit 13085.

2 MR. PITLUCK: No objection, your Honor.

3 THE COURT: We receive Defendant's Exhibit 13085.

4 (So marked.)

5 Q This press release announces a public offering of 4.7
6 million shares of Retrophin stock, correct?

7 A Yes.

8 Q And it describes that the company received approval to
9 list its common stock on the NASDAQ common market under the
10 sticker RTRX?

11 A Yes.

12 Q The date of this is January 2014?

13 A Yes.

14 Q And going back to 992, around January 2014, again, you
15 see the share price increasing?

16 A Yes.

17 Q Mr. Carter can you do the second half of the chart.

18 And this is after the company in January -- that's
19 when the company lists on NASDAQ.

20 A Yes.

21 (Continued on next page.)

22

23

24

25

Oremland - cross - Denerstein

5805

1 BY MS. DENERSTEIN: (Continuing)

2 Q And the share price increases dramatically?

3 A Yes. During this time frame, it increases and also
4 decreases.

5 Q Correct. It lands at about 10 -- you are going a little
6 below 10 if you are going to the end of your chart on
7 September 29, 2014, right?

8 A Right.

9 Q So -- and the volume has, the share volume has increased
10 again tremendously, correct?

11 A Yes.

12 Q Millions of shares are now being traded, correct?

13 A Yes.

14 Q Way more shares are available than in the period prior to
15 the uplisting, correct?

16 A Yes.

17 Q The other thing I wanted to just review with you is
18 closing price is not the only measure of price, correct?

19 Closing price is not the only measure of price?

20 A I don't understand your question.

21 Q Well, on your chart, you use the end of the day price
22 from the Bloomberg data, correct?

23 A Yes.

24 Q Price can fluctuate throughout the day?

25 A Yes.

CMH

OCR

RMR

CRR

FCRR

Oremland - cross - Denerstein

5806

1 Q Price can go up and price can go down on the very same
2 day?

3 A Yes.

4 Q I want to show you what's in evidence as Government
5 Exhibit 956.

6 Ms. Oremland, this table in evidence shows Bloomberg
7 data for opening days, intra-day high price, intra-day low
8 price and closing price?

9 A Yes.

10 Q Intra-day price means the highest price during the day
11 according to Bloomberg, correct?

12 A "Intra-day high price," yes.

13 Q Means the highest price during the day?

14 A Yes.

15 Q "Intra-day low price" means the lowest price during the
16 day?

17 A Yes.

18 Q So if you look at December 26th, the opening price was
19 3.75, correct?

20 A Yes.

21 Q It rose to a high of 4.50, correct?

22 A Yes.

23 Q It dropped to a low of 3.50, correct?

24 A Yes.

25 Q And it closed at \$4, correct?

CMH

OCR

RMR

CRR

FCRR

Oremland - cross - Denerstein

5807

1 A Yes.

2 Q So, throughout that single day, the stock price changed
3 by \$1?

4 A Yes.

5 Q Directing your attention to row, the column for
6 January 14, 2013, Retrophin opened at 3.95, correct?

7 A Yes.

8 Q It rose to a high of 4 -- the intra-day high price was
9 4.95, correct?

10 A Yes.

11 Q And it dropped to the intra-day low price of \$3.70,
12 correct?

13 A Yes.

14 Q And it closed at \$3.70, correct?

15 A Yes.

16 Q That's a fluctuation of greater than \$1 during a day?

17 A Yes.

18 Q It's fair to say that looking at closing price alone does
19 not always reflect all the price changes that may have
20 occurred throughout the day, correct?

21 A Yes.

22 Q And Government Exhibit 992 and 995, they only show
23 closing price, correct?

24 A Yes.

25 Q Now, you've worked at FINRA for a vast majority of your

Oremland - cross - Denerstein

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1 legal career, correct?

2 A Yes.

3 Q And you're testifying based on your experience there?

4 A Yes.

5 Q And your legal experience is limited to FINRA?

6 They've been your employer for 16 of the 17 years
7 that you've been a lawyer, correct?

8 A Yes.

9 Q Your legal experience is limited to FINRA, correct?

10 A Yes.

11 Q And you've never worked as a lawyer in private practice,
12 correct?

13 A Yes.

14 Q You're not a corporate lawyer at a firm?

15 A No.

16 Q You've never worked in house at a company?

17 A No.

18 Q And you've never worked as a lawyer at a law firm, as a
19 lawyer at a law firm?

20 A Right.

21 Q And you've never served as outside counsel to a company,
22 correct?

23 A Right.

24 Q And you've never counseled a company through the reverse
25 merger process?

CMH

OCR

RMR

CRR

FCRR

Oremland - cross - Denerstein

5809

1 A Right.

2 Q And you don't advise start-ups in filing the, all the
3 forms that are required with the SEC?

4 A Right.

5 Q And you've never provided legal advice to a client on how
6 to fill out various forms, correct?

7 A Right.

8 Q You understand that the signatory is responsible for the
9 accuracy of the filing, isn't that true?

10 THE COURT: On what form?

11 MS. DENERSTEIN: That's a good point.

12 Q You understand that lawyers rely on information provided
13 by their clients?

14 A I don't know.

15 Q And that's because you have not been, you have no
16 experience in counseling companies, correct?

17 A Right.

18 Q So let's turn to Government Exhibit 960 in evidence and I
19 want to start on page 80. That's the last page. And I
20 want --

21 MS. DENERSTEIN: Is this page 80 at the bottom,
22 Mr. Carter? There you go.

23 Q This form is signed by Martin Shkreli, correct?

24 A Yes.

25 Q And the date is December 18, 2012, correct?

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1 A Yes.

2 Q This form is not signed by Mr. Greebel, correct?

3 A Right.

4 Q And let's talk about this, the 8-K. The 8-K, if we could
5 turn to page 23, please, let me know when you're there.

6 At the very top, what does it say?

7 A Risk factors: Our business, as well as our shares of
8 common stock, are highly speculative and involve a high degree
9 of risk. Investing in our common stock involves a high degree
10 of risk. Our securities should be purchased only by persons
11 who can afford to lose their entire investment. You should
12 carefully consider the risks and uncertainties described
13 below, together with all of the other information included
14 herein, including the financial statements and related notes,
15 before deciding to invest in our common stock. If any of the
16 following risks actually occur, they would materially harm our
17 business, prospects, financial condition and results of
18 operations.

19 MS. DENERSTEIN: Okay. Let's keep going,
20 Mr. Carter.

21 Q If we can go back to -- I'm not going to ask you to read
22 everything under it, but if you could scroll down, it states,
23 The company is still in the development stage and has not
24 generated any revenues.

25 Correct, Ms. Oremland? Just the header.

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1 A Oh, yes.

2 MS. DENERSTEIN: And if you scroll down further,
3 Mr. Carter, if we could highlight: Risks related to our
4 financial position and need for additional capital.

5 Q Correct, Ms. Oremland?

6 A Yes.

7 Q And if you scroll to the next page, it talks about --
8 stop there. There's a header "no operating history," correct?

9 A Yes.

10 Q And then if you go down, it says, "Future profitability
11 uncertain," correct?

12 A Yes.

13 Q And then there is a page on, the next page, legal risks,
14 correct?

15 A Yes.

16 Q And then there's a page -- keep going -- on future
17 capital requirements, correct?

18 A Yes.

19 Q And underneath it, it says: We will need substantial
20 additional funding and may be unable to raise the capital we
21 needed which would force us to delay, reduce or eliminate our
22 product development programs or commercialization efforts.

23 A Yes.

24 Q Let's go to page 29. This talks about risks related to
25 our intellectual property, correct?

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5812

1 A Yes.

2 Q And the sentence underneath states: If we are unable to
3 obtain and maintain protection for the intellectual property
4 relating to our technology and products, the value of our
5 technology and products will be adversely affected. Correct?

6 A Yes.

7 Q And the risk factors are a fairly large portion of this
8 document, is that fair to say?

9 MR. PITLUCK: Objection to the form, Your Honor.

10 THE COURT: Try to rephrase, Ms. Denerstein.

11 Q The risk factors are described at pages 23 to 58,
12 approximately, of this document, is that fair to say? We can
13 even say over 20 pages?

14 A Yes.

15 Q So the company is describing the risk that, in buying its
16 stock. This is available to the public, correct?

17 A Yes.

18 Q So when they're reading this document, this is what they
19 would see, correct?

20 MR. PITLUCK: Objection, Your Honor.

21 Q If the public chose to read this document, they would see
22 there are substantial risks disclosed, correct?

23 A Yes.

24 Q Okay. Let's go to, let's go to directing your attention
25 to Government Exhibit 962 in evidence, Retrophin's 2012

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5813

1 Schedule 13D dated December 20, 2012.

2 MS. DENERSTEIN: Okay. Can we go to the last page,
3 Mr. Carter, the second to last page?

4 Q That states: After reasonable inquiry and to the best of
5 my knowledge and belief, I certify that the information set
6 forth in this statement is true and complete. I don't know
7 what's missing, complete and correct. Right?

8 A I don't know what that word is but ...

9 Q I believe it's "complete" but we can just -- it says,
10 "true, complete and correct." I'm sure we can find a copy
11 that has that in there.

12 A Yes.

13 Q And that's dated December 20, 2012, correct?

14 A Yes.

15 Q And it's signed by who?

16 A Martin Shkreli.

17 Q This is not signed by Evan Greebel, isn't that correct?

18 A Yes.

19 Q And Martin Shkreli is attesting to: After reasonable
20 inquiry and to the best of my knowledge and belief, I certify
21 that the information set forth in this statement is true and
22 correct?

23 A Yes.

24 MS. DENERSTEIN: Can we go to Government Exhibit 964
25 and can we go to the last page.

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1 Q This says: After reasonable inquiry and to the best of
2 my knowledge and belief, I certify that the information set
3 forth in this statement is true and correct.

4 A Yes.

5 Q And it's dated February 19, 2013?

6 A Yes.

7 Q And it's signed by Martin Shkreli, correct?

8 A Yes.

9 Q Okay. You testified that this form was filed because of
10 a February 2013 PIPE, correct?

11 A Yes.

12 Q And "PIPE" means what?

13 A Private investment of public equity. It's a private
14 placement.

15 Q Isn't it the case from this 13D that there were several
16 reasons this form was amended?

17 A I don't know.

18 Q Well, isn't the first reason that MSMB Capital no longer
19 had any shares? If you look at page three.

20 A Right. Yes.

21 Q And isn't the second reason that Mr. Shkreli participated
22 in the PIPE and purchased 120,000 shares and 60,000 warrants?

23 A Yes.

24 Q Fair to say Mr. Shkreli was buying in the PIPE aligning
25 his financial interests with the company?

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1 A Yes. He bought shares in the PIPE.

2 Q Is it fair to say Mr. Shkreli from December 2012 through
3 September 2014 didn't sell his Retrophin shares?

4 A I don't know.

5 Q And the third reason for filing, if you see above item
6 six, is Martin Shkreli purchased three times, correct?

7 A Yes.

8 Q Do you know one way or the other whether a Katten
9 attorney named Michelle Griswold prepared this 13D?

10 A I have no idea.

11 Q But you do know that Martin Shkreli certified that the
12 information in this 13D was true, complete and accurate,
13 correct?

14 A Yes.

15 Q And let's just talk about the 13D's, the two government
16 Exhibits 962 and 964.

17 MS. DENERSTEIN: On page 8, row 11, 962, Mr. Carter,
18 and row 13.

19 Q Now, anybody who looks at this 13D form knows that Martin
20 Shkreli disclosed his, that he owned more than 40 percent of
21 the stock, correct?

22 A If they know -- I don't know. If they know how to read
23 it, yes, they could see how much he owned and that it was
24 40 percent of the stock.

25 Q That's a pretty significant holding, is it not?

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1 A Yes.

2 Q Can we look at the next Government Exhibit, 964, the
3 amended 13D, page eight, row 11.

4 Martin Shkreli disclosed his ownership of more than
5 3.18 million shares, correct?

6 A Yes.

7 Q And in row 13, there's been, I think, the PIPE that you
8 talked about. He now owns more than 27 percent, correct?

9 A Yes.

10 Q That's still a large portion of the stock, correct?

11 A Yes.

12 Q Now, you said earlier, somebody knows how to read these
13 forms, correct?

14 A Yes.

15 Q Hard to read, huh?

16 A Actually, not really.

17 Q So now they're easy to read?

18 A Yes.

19 Q So, if somebody looked at this form, they would be able
20 to tell that Martin Shkreli owned a significant amount of the
21 stock, correct?

22 A They could see how much he owned.

23 Q And it's not insignificant, is it?

24 A No.

25 Q Okay. FINRA requires members to disclose civil judicial

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1 proceedings, correct?

2 A Yes.

3 Q And it also requires members to disclose employment
4 terminations?

5 A Yes.

6 THE COURT: When you say "members," are you talking
7 about companies?

8 MS. DENERSTEIN: I'm talking about companies and
9 individuals, both.

10 (Continued on next page.)

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1 MS. DENERSTEIN: Your Honor, may I have one moment?

2 THE COURT: Yes.

3 (Pause.)

4 MS. DENERSTEIN: Your Honor, with your permission
5 and, of course, the jury's, would it be okay if we broke for
6 lunch? I think I only have 5 or 10 minutes left, but it would
7 give me an opportunity to tighten it up.

8 THE COURT: We can take a lunch break now if the
9 jurors are ready to have lunch.

10 THE JURY: Yes.

11 THE COURT: So, thank you. Please don't talk about
12 the case. Keep an open mind. Please try to come back if you
13 could at 2:10, 2:05. You will be dismissed today at 4:30.
14 Thank you.

15 (Jury exits.)

16 THE COURT: You can step down and have lunch as
17 well.

18 THE WITNESS: Thank you.

19 (Witness steps down.)

20 THE COURT: All right. Let's take an hour and I
21 will see you back here at 10 after 2:00.

22 (Luncheon recess.)

23 (Continued on next page.)

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25

1 AFTERNOON SESSION

2

3 (In open court; jury not present.)

4 THE COURT: Good afternoon. Is everybody back? I
5 thought I said quarter of. Have a seat everybody.

6 (Pause.)

7 THE COURT: All right. Let's get started. Defense
8 counsel are in the room and Mr. Greebel is here. Yes,
9 Ms. Smith or who has the issue?

10 MR. KESSLER: Sure. So, your Honor, we wanted to
11 come back this early anticipating potentially several issues.
12 I think almost all of those issues are now not issues because
13 we have been told that Mr. Brodsky is not going to
14 cross-examine Mr. Pierotti. Mr. Dubin will do that instead.
15 Most of the concerns we wanted to talk through related to
16 Mr. Brodsky doing the cross-examination. A lot of concerns
17 have been obviated.

18 THE COURT: Why didn't anyone call me?

19 MR. KESSLER: We still have one more thing to talk
20 to. As the court is aware there are 302 reports related to
21 various discussions with Mr. Pierotti and there's also an
22 unsigned NPA documents. Nonprosecution agreement, NPA.
23 Mr. Dubin has suggested to the extent any of these documents
24 are used that the -- I don't know that Mr. Brodsky's name or
25 all the names can be redacted. We don't object to the

1 redaction of Mr. Brodsky's name or other attorneys' names. We
2 do object to the extent any of the documents, of those
3 documents, the 302's or the NPA would be offered into
4 evidence.

5 The 302's we've discussed in the past. They are not
6 a witness's statement. The NPA is unsigned and so it's not
7 Mr. Pierotti's statement or his adopted statement and there
8 would be no other basis to admit an unsigned NPA in evidence.
9 So that's I think the one remaining thing we wanted to talk
10 about.

11 THE COURT: So the one document that could be
12 offered would be the NPA, but you certainly not going to be
13 offering 302s.

14 MR. DUBIN: Never suggested I would, never.

15 MR. KESSLER: We are not suggesting the NPA could be
16 offered. That's the remaining document I don't think we have
17 resolved.

18 MR. DUBIN: The NPA is no different than the NPA
19 that was admitted into evidence with respect to Mr. Su. Under
20 the best evidence rule, this is the best evidence. The
21 Southern District produced that. Mr. Pierotti is going to
22 claim that he can't find it and I will lay the appropriate
23 foundation and authenticate it. Just because his signature
24 isn't on it -- his signature is on one somewhere that was in
25 his possession at some point. He claims to have lost it or

1 misplaced it.

2 I'll lay the appropriate foundation. We can deal
3 with it when he takes the stand. Just because he hasn't
4 signed it doesn't make it inadmissible.

5 MR. KESSLER: The NPA that we have is a document
6 from the files of the Southern District of New York. There is
7 no evidence that it reflects exactly what the final NPA was.
8 It is not signed by Mr. Pierotti, so it's not his statement
9 and furthermore there's no basis to admit the NPA anyway.

10 MR. DUBIN: Your Honor, there is a basis.

11 THE COURT: Did anyone sign this version? The one
12 that I have is blank. Is there one that Mr. Brodsky signed?

13 MR. KESSLER: My understanding of the record is
14 Mr. Pierotti remembers signing one. He doesn't have it. We
15 don't have it. The Southern District doesn't have it.
16 Defense counsel doesn't have it.

17 MR. DUBIN: I will lay the appropriate foundation
18 with Mr. Pierotti and we can deal with it when he testifies.
19 Frankly, I have a basis to believe that the one he signed is
20 identical to the one that we got.

21 THE COURT: So you will want to admit it?

22 MR. DUBIN: Absolutely.

23 THE COURT: And if they do want to admit it you
24 don't want Mr. Brodsky's name redacted.

25 MR. KESSLER: I believe we all agree that

1 Mr. Brodsky's name should be redacted from the document.

2 MR. DUBIN: It already has been.

3 MR. KESSLER: That is if the court admits the
4 document, we agree the name should be redacted. We are
5 objecting to the admission of it. It's not a prior
6 inconsistent statement. It's not probative. That document is
7 not probative of anything. It's certainly not probative that
8 Mr. Pierotti did in fact commit a crime. That's not what the
9 nonprosecution agreement says. It's not inconsistent with his
10 statement that he signed a nonprosecution agreement because he
11 said that.

12 THE COURT: You would not object to Mr. Dubin
13 probing the witness about the fact that he did enter into a
14 nonprosecution agreement?

15 MR. KESSLER: No. We don't object to that.

16 MR. DUBIN: I am going to seek to admit it. I know
17 it's admissible, at least from my analysis. I will lay the
18 proper foundation with him. I don't want to give up too much
19 of where I'm going with it in advance. This is the one that
20 he signed and if he denies that then I think they might have a
21 basis to object. Simply because his signature didn't land on
22 this one, this is the best evidence. Under the best evidence
23 rule they can't now say that because the Southern District
24 could not find in their files, respectfully, your Honor, or
25 because he can't find it in his files, which I think calls

1 into question his credibility in the first place, an important
2 document that you would expect him to have a copy of. I think
3 that we'll be able to establish its admissibility once he
4 takes the stand.

5 MR. KESSLER: The only reason we're raising this
6 issue now is to avoid a sidebar about this later. The best
7 evidence rule says that you can't prove the contents of a
8 writing with evidence about the document other than the
9 writing in most circumstances. This is not a best evidence
10 issue.

11 The question is whether, first of all, this document
12 is actually identical to the final one that was signed and,
13 second of all, even if it were signed it would not be
14 admissible.

15 MR. DUBIN: The Jackson Su nonpros, there was no
16 objection to it. It went right into evidence.

17 THE COURT: Well, because it was just a matter of
18 his lawyer having the document in his briefcase and not being
19 available to enter it and as soon as it was provided by
20 Mr. Burke it was copied and given to the parties and that
21 signed version was substituted for that exhibit. There's a
22 material difference.

23 MR. DUBIN: Your Honor, the government had this
24 nonpros for weeks. They had this for weeks. They have been
25 in possession of this for weeks. The fact that he doesn't

1 have the signed version is really neither here nor there
2 because I believe that he will concede --

3 THE COURT: I'll have to instruct the jury we don't
4 know whether this is the agreement that was signed.

5 MR. DUBIN: No. I agree. Unless he concedes that
6 it in fact is.

7 MR. KESSLER: Your Honor, even if he signed it, --
8 let me put it this way. There is no basis to admit it.

9 MR. DUBIN: We disagree, your Honor.

10 THE COURT: Okay. Typically I think these kinds of
11 agreements are often admitted by the government when they
12 present a witness who may have a document or an agreement like
13 this. They are often admitted by stipulation. I'm very
14 uncomfortable with admitting an unsigned document. I mean
15 it's just odd that nobody, neither the government nor the
16 defendant, has signed this document. So we'll see what he
17 says.

18 MR. DUBIN: You meant Mr. Pierotti not the
19 defendant, right.

20 THE COURT: Yes. I'm sorry.

21 MR. DUBIN: That's all right.

22 Your Honor, I think that we shouldn't be placed in a
23 position of having an otherwise admissible document now be
24 deemed nonadmissible because the witness who is on the stand
25 is going to claim to have misplaced a copy and apparently when

1 the court ordered the government to get this from the Southern
2 District they somehow -- their file keeping system is such
3 that they just can't locate the signed copy of it. I think
4 that he will concede on the stand that this is indeed the very
5 document that he signed.

6 THE COURT: I guess my view is that he could testify
7 as to what his understanding was of the agreement. I mean the
8 government is not objecting to that. But to admit a document
9 as the actual document without any indication that it is, in
10 fact, that, is not really appropriate. You will be able to
11 get the witness fully to discuss the terms of the agreement.

12 MR. DUBIN: My point, your Honor, is that I think he
13 will concede on the stand -- he will concede that this is the
14 very document that he signed word for word. The only thing
15 missing from this is his signature and the government's
16 signature because neither of them could find it. So I guess
17 the problem that I'm having, your Honor, and the reason why I
18 feel like we're being put in a position that, you know, is
19 prejudicial to my client, is because due to no fault of ours
20 --

21 THE COURT: Or the government's.

22 MR. DUBIN: I'm not suggesting it is the
23 government's.

24 THE COURT: Or this team. I should say the Southern
25 District. I can't comment on their recordkeeping.

1 MR. MASTRO: I object.

2 THE COURT: I just don't know why they wouldn't have
3 a copy. It just seems odd. But neither the defense team nor
4 this team of prosecutors is at fault and nobody should be
5 benefited or punished one way or the other and I don't believe
6 that having Mr. Pierotti review this document and state what
7 he recalls about the terms of this document would in any way
8 prejudice the defense.

9 I'm just talking about it from a court perspective.

10 MR. DUBIN: Understood.

11 THE COURT: You're proffering something as an
12 agreement but nobody has a signed copy and I'm very reluctant
13 to admit a document like that as the agreement when it is not
14 signed by either party.

15 MR. DUBIN: Understood.

16 THE COURT: I would tilt in favor of doing it if at
17 least one party had signed it, with the idea this was what was
18 agreed to orally and here is one party signing off and
19 proffering it to the other for signature, but we don't have
20 that here.

21 MR. DUBIN: What I will do is while I have him on
22 the stand and take him through the agreement, unless I think
23 it's absolutely necessary because he's giving testimony that I
24 think contradicts or is somehow inconsistent with the general
25 terms that we all know that he signed, I won't need to offer

1 it and in that case I won't. As long as he's adopting the
2 terms, the general terms of it, and that comes in through his
3 testimony.

4 But I would ask your Honor to at least reserve until
5 you hear him on the stand. If he reads this and he says, you
6 know what, looking at this this is exactly the document that I
7 signed and I know that the only thing missing is my signature,
8 if that's his testimony, I might then ask to move it in. If
9 he can't confirm that and he just concedes the general terms
10 then I won't.

11 Is that fair?

12 MR. KESSLER: I don't think we object to showing him
13 the document and saying is this the NPA you signed. What our
14 concern is is that in taking him through the terms, what will
15 happen is the entire document will be read to the jury in an
16 effort to get Mr. Pierotti to confirm.

17 MR. DUBIN: I will proffer to the court right now
18 that I am not going to do that. There's only really one
19 relevant paragraph that I want to read word for word.

20 THE COURT: The third one?

21 MR. DUBIN: That I can do without having to waste
22 the court's or the jury's time reading it. It's really the
23 first one. That's critical.

24 MR. KESSLER: That's just going to be impeaching
25 with collateral evidence.

1 MR. DUBIN: Your Honor, with all respect I
2 understand the government doesn't want this in simply because
3 he agrees not to be criminally prosecuted in direct connection
4 with an insider trade that he admits that he made. So of
5 course I have to be able to get into the substance of this,
6 especially if I'm making a good-faith proffer to the court
7 that I won't seek to admit the document as long as I can get
8 in the critical substance of it. It's critical that I read
9 that.

10 MR. KESSLER: Your Honor, we're not objecting to
11 cross-examination about the nature of the NPA. The point is
12 Mr. Dubin is now saying he's going to take a document that is
13 not in evidence read it out loud in front of the jury and ask
14 Mr. Pierotti if that's the NPA he signed. It will be in front
15 of the jury.

16 THE COURT: What would be wrong with Mr. Dubin
17 asking Mr. Pierotti whether he was -- he entered into an
18 agreement with the Southern District under which the Southern
19 District agreed not to prosecute him criminally for his
20 participation in trades of securities of JM Smucker on a given
21 date did?

22 MR. KESSLER: Nothing.

23 THE COURT: That's not reading it in. It's
24 basically stating the essence of what's in paragraph one.

25 MR. DUBIN: Correct, your Honor. I'll change a few

1 words.

2 THE COURT: Don't read it.

3 MR. DUBIN: Okay.

4 THE COURT: All right. Is Ms. Oremland ready and
5 we'll check to see if our jurors are here.

6 (Pause.)

7 THE COURT: I have not yet heard from Juror No.
8 One's HR people. So I just spoke to Juror No. One and said,
9 please, try to get ahold of them yourself. My understanding
10 from the director is that if she can work something out with
11 HR he would be fine with it. The policy is 20 days out for
12 jury service paid. And the idea was that if she works on the
13 weekends and holidays she could build up the time rather than
14 lose it. But the 20 days is what they have as their policy.
15 So I did encourage her to reach out herself to HR and I hope
16 she'll be able to do that. The fellow I spoke to today is
17 apparently going to be out until after Thanksgiving. So I
18 don't know what the outcome will be.

19 MR. BRODSKY: Thank you, your Honor, for the update.

20 MR. PITLUCK: Just from a logistical standpoint, I
21 know we're stopping at 4:30 today. Did you want to try to
22 push through without an afternoon break?

23 THE COURT: I'm always happy to do that. Ms.
24 Jackson watches the jurors and if somehow they communicate
25 silently and she tells me when it's time.

Oremland - cross - Denerstein

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1 MR. PITLUCK: If the court interrupts me and calls
2 for a break, that's fine. I wanted to raise that possibility
3 because it's only a couple of hours.

4 THE COURT: I'm happy to push for two hours if they
5 can do it. I have a court function at 3:45, but I will just
6 arrive late. We were missing a juror. That's why they have
7 not come in yet.

8 MR. PITLUCK: For the court function, do you want us
9 to stop earlier or do you want to go until 4:30? Judge
10 Gleeson will wait.

11 THE COURT: They don't have to wait for me. I did
12 miss a colleague's induction. That's too bad. It's fine.
13 It's what we have to do.

14 (Pause.)

15 (Jury present.)

16 THE COURT: All our jurors are present. Please,
17 have a seat. Ms. Oremland, you are still under oath and
18 Ms. Denerstein may resume her cross-examination.

19 CROSS-EXAMINATION

20 BY MS. DENERSTEIN: (Continued)

21 Q Going briefly back to Government's Exhibit 995. On some
22 days following a share price decline the select accounts
23 actually sold shares? By select accounts I mean Martin
24 Shkreli, Kevin Mulleady and Andrew Vaino and Marek Biestek?

25 A Yes.

Oremland - cross - Denerstein

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1 Q Directing your attention to December 26, 2012 and
2 Government's Exhibit 955, Bloomberg chart, page one. If we
3 can go to December 26. The share price closed at four
4 dollars, correct?

5 A Yes.

6 Q And the very next day the share price closed at 3.10,
7 correct?

8 A Yes.

9 Q That's a decline of 90 cents on a four dollar stock?

10 A Yes.

11 Q Almost a quarter of the price?

12 A Yes.

13 Q Can we go to Government's Exhibit 9 oh in evidence. And
14 can we filter for column A the date for December 28, 2012.
15 And now can we go to column J and filter for the select
16 accounts, Andrew Vaino, Kevin Mulleady, Marek Biestek and
17 Martin Shkreli and can we also include Tim Pierotti?

18 So if you look at rows 425 through 36 and you go all
19 the way across to J, that is Andrew Vaino, correct?

20 A Yes.

21 Q And if you go back to column C, he is selling, correct?

22 A Yes.

23 Q And he sells about 4,000 shares?

24 A Yes.

25 Q If you go to row 455, Tim Pierotti, go to column J. On

Oremland - cross - Denerstein

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1 the same date, December 28, 2012, and he sells 24,700 shares,
2 correct?

3 A Yes.

4 Q So the day after the price has dropped in Retrophin Tim
5 Pierotti and Andrew Vaino are both selling, so they are
6 selling stock in a company at a low price, when the price is
7 dropping? The price decreased from the day before, correct?

8 A Yes.

9 Q So they sold at a lower price than the day before?

10 A Yes.

11 Q Turning back to your testimony that you didn't take the
12 volume from the blue sheets, Government's Exhibit 950 I think
13 through 954 in evidence, because that was market making
14 activity and not actual trades, correct?

15 A They are trades, but they are the trades that are
16 facilitating the buyer and the sellers. They are facilitating
17 the market. They are putting together the buy activity and
18 the sell activity.

19 Q But that's also because in your view you assume every
20 trade corresponding to a firm that might be a market maker was
21 done for a market making purposes, correct?

22 A I don't understand your question.

23 Q You don't actually know whether a firm was executing the
24 trade as a market maker or for a client, correct? Yes or no.

25 A They are market maker firms.

Oremland - cross - Denerstein

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1 Q A market maker firm can execute trades for clients,
2 correct?

3 A Generally, they don't. They are wholesale market makers.
4 They don't have clients.

5 Q Generally they don't, but sometimes they do have clients,
6 correct?

7 A You know, I think it's very rarely that they'll execute
8 or clear orders for other trading accounts. They don't have
9 customers at their firms. They are a special type of broker
10 dealer that exists really to facilitate the trading. That's
11 how they make their money. They don't make it from clients.

12 Q But you didn't determine whether there was an entity or a
13 person behind each of these trades that you concluded was a
14 market maker, correct? Yes or no.

15 A No.

16 Q And you have subpoena power, correct?

17 A No.

18 Q The SEC has subpoena power, correct?

19 A Yes.

20 Q And certainly the government has subpoena power, correct?

21 A Yes.

22 Q They could have subpoenaed the information to make sure
23 that the trades that you discounted who they were for or were
24 not for, correct?

25 MR. PITLUCK: Objection, your Honor.

Oremland - cross - Denerstein

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1 THE COURT: Overruled.

2 Q Yes or no, please.

3 A Yes.

4 Q During your direct testimony you testified that it's
5 beneficial for a controlling shareholder to limit the amount
6 of the shares available for sale, correct? Controlling
7 shareholder would -- you said it's beneficial for a
8 controlling shareholder to limit amounts, to limit the amount
9 of the shares available for sale, correct?

10 A I don't remember.

11 Q That was just this morning, right?

12 A Yes.

13 Q And you were saying that a controlling shareholder would
14 want to limit the amount of the shares available for sale, in
15 response to Mr. Pitluck's question? You don't remember that?

16 A No.

17 Q Isn't it true that the individuals in the select accounts
18 sold more stock than they purchased on your chart in 995?

19 A Yes.

20 Q They were net sellers?

21 A Yes.

22 Q And that contradicts your testimony that you don't
23 remember that it's beneficial for a controlling shareholder to
24 limit the amount of shares available for sale?

25 MR. PITLUCK: Objection to the form, your Honor.

Oremland - redirect - Pitluck

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1 THE COURT: Sustained.

2 Q They sold more than they bought, correct?

3 A Yes.

4 Q That shows they weren't aligned with management, correct?

5 A I don't know.

6 Q Evan Greebel was not a recipient of any of the free
7 trading shares, correct?

8 A Correct.

9 MS. DENERSTEIN: One moment, your Honor.

10 (Pause.)

11 MS. DENERSTEIN: No further questions.

12 THE COURT: All right. Thank you. Do you have any
13 redirect, Mr. Pitluck?

14 MR. PITLUCK: Very briefly, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. PITLUCK:

17 Q Good afternoon, Ms. Oremland?

18 A Good afternoon.

19 Q You testified a lot about blue sheet data on both direct
20 and cross-examination. Do you remember that?

21 A Yes.

22 Q Is blue sheet data publicly available?

23 A Yes.

24 Q Why isn't blue sheet data used for public volume
25 calculation?

Oremland - redirect - Pitluck

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1 MS. DENERSTEIN: Objection.

2 Q Why didn't you use blue sheet data in your calculation of
3 the publicly available volume?

4 A I never use it to calculate total volume.

5 Q Why not?

6 A Because that's not what is available to the public.
7 Investors see what's available to the public and that's
8 reflected in the Bloomberg price and volume data.

9 (Continued on next page.)

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Oremland - redirect - Pitluck

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1 BY MR. PITLUCK: (Continued)

2 Q So in your view, the chart that calculated the public
3 volume of a stock being traded that included blue sheet data
4 would be inaccurate?

5 A Yes.

6 Q Including blue sheet data for the publicly available
7 volume?

8 A Yes.

9 Q Now, we looked at Government Exhibit 995 which is the
10 chart with all the different colored bars. Do you remember
11 that?

12 A Yes.

13 Q Why did you focus on the period in that chart that's from
14 December to February, December 2012 to February 2013?

15 A It really was the key period for this company --

16 MS. DENERSTEIN: Objection. Move to strike.

17 MR. PITLUCK: Judge, this was raised on cross.

18 THE COURT: And she's explaining what was asked of
19 her on cross about the focus on this limited period. She is
20 explaining why she did it. I will overrule the objection.

21 Q So why did you chose that time period to conduct your
22 analysis on the share price and trading volume?

23 A Well, it had just completed a reverse merger. It's a
24 startup company. It's a new company. There wasn't a lot of
25 stock that was trading, not a lot of information. It was

Oremland - redirect - Pitluck

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1 really kind of the make-it-or-break-it time for this company.

2 It was before they secured --

3 MS. DENERSTEIN: Objection.

4 A -- \$10 million of financing and --

5 THE COURT: I am going to overrule the objection.

6 Q You can continue.

7 A Once they secured the financing in mid-February, then, as
8 you can tell by the chart, the price really continues to be
9 relatively stable, continues to rise, and things, very
10 positive things start to happen for the company.

11 Q And when Bloomberg reports public volume, that would
12 capture any trades that were conducted by for, by a brokerage
13 firm for a client, right?

14 A Yes.

15 Q Now, you testified about the relationship between price
16 and volume, correct?

17 A Yes.

18 Q And is it the publicly available volume that affects the
19 price?

20 A Yes.

21 Q Not the private blue sheet data that affects the price,
22 correct?

23 A Right.

24 MR. PITLUCK: Nothing further, Judge. Thank you.

25 THE COURT: All right. Ms. Denerstein.

Oremland - recross - Denerstein

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1 RE CROSS-EXAMINATION

2 BY MS. DENERSTEIN:

3 Q Ms. Oremland, you don't work at Retrophin, do you?

4 A No.

5 Q And you have no idea what is key or not key for
6 Retrophin, correct?

7 Are you an expert on Retrophin?

8 A No.

9 Q So you have no idea what is key or not key to Retrophin?

10 A No.

11 (Continued on next page.)

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OCR

RMR

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1 MS. DENERSTEIN: No further questions.

2 THE COURT: All right. Anything else?

3 MR. PITLUCK: No, Your Honor.

4 THE COURT: Ms. Oremland, you are excused. Have a
5 nice weekend.

6 (Witness excused.)

7 THE COURT: Do you have your next witness?

8 MR. PITLUCK: We do, Your Honor.

9 THE CLERK: Please raise your right hand.

10 (Witness sworn.)

11 THE CLERK: Please have a seat and state and spell
12 your full name for the record, please.

13 THE WITNESS: My name is Timothy Joseph Pierotti.

14 THE COURT: Would you spell --

15 MR. PITLUCK: Spell your last name.

16 THE WITNESS: P-I-E-R-O-T-T-I.

17 THE COURT: Please proceed.

18 MR. PITLUCK: Thank you, Your Honor.

19 (Continued on next page.)

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Pierotti - direct - Pitluck

5841

1 TIMOTHY JOSEPH PIEROTTI ,

2 called as a witness, having been first duly sworn,

3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PITLUCK:

6 Q Good afternoon, Mr. Pierotti?

7 A Good afternoon.

8 Q How old are you?

9 A Forty-six.

10 Q Are you married?

11 A I am. I've been married 22 years.

12 Q Do you have any children?

13 A I have four kids.

14 Q Where do you live?

15 A I live in Summit, New Jersey.

16 Q What's your current job?

17 A I work for Deutsche Bank. I am the research, the equity
18 research product manager.

19 Q And how long have you worked at Deutsche Bank?

20 A Three and a half years.

21 Q What does the product manager for equity research do?

22 A So, I help work with all the analysts, all the research
23 analysts in equity at Deutsche Bank write their pieces, come
24 up with thesis on the stocks, and then I help sales understand
25 those stock recommendations.

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Pierotti - direct - Pitluck

5842

1 Q And did you go to college?

2 A I did.

3 Q Where did you go to college?

4 A I went to Boston College.

5 Q What year did you graduate?

6 A 1994.

7 Q What was your first job out of college?

8 A I was, I was renting apartments first job out of college.

9 Q And what did you do after that?

10 A And then after that, I -- shortly after that, I got a job
11 at Morgan Stanley. I was a sales assistant in private wealth
12 management.

13 Q What did you do there?

14 A As a sales assistant, I checked trades, things like that.
15 I mean, you're talking about for the whole seven years I was
16 at Morgan Stanley?

17 Q You were at Morgan Stanley for seven years?

18 A Yes.

19 Q What were the different jobs?

20 A So, I started as a sales assistant, then I became a
21 salesman and then I moved to the equity capital markets area
22 where I was a junior deal captain and then I left in 2002.

23 Q When you left Morgan Stanley, where did you go?

24 A I went to a small family office hedge fund called
25 Victoire Finance.

Pierotti - direct - Pitluck

5843

1 Q What was your -- what were your job responsibilities at
2 Victoire Finance?

3 A It was a small office so you kind of wore many hats. I
4 was an analyst and a trader and portfolio manager.

5 Q And did you analyze stocks when you were there?

6 A I did.

7 Q And what kind of industries did you analyze stocks in at
8 Victoire?

9 A Mostly consumer but anything that came up on deals,
10 anything, and secondaries, but a generalist. I've always kind
11 of stayed out of technology and health care but other than
12 that, consumer and then some generalist.

13 Q What do you stay out of technology and health care?

14 A I'm really more of kind of a macro investor which means I
15 think about economics and the whole macro, macro environment,
16 and to be successful in health care and technology, you really
17 have to have a very strong kind of bottoms-up understanding of
18 the companies.

19 Q Now, how long were you at Victoire Finance?

20 A I was at Victoire Finance from 2002 to 2005, three years.

21 Q Where did you go after you left there?

22 A I went to the Galleon Group.

23 Q What was the Galleon Group?

24 A It was an \$8 billion hedge fund out of New York.

25 MR. DUBIN: Can we have a year on that?

Pierotti - direct - Pitluck

5844

1 Q I believe you testified a moment ago, what year did you
2 leave Victoire?

3 A 2005.

4 Q Did you start at Galleon the same year?

5 A Yes.

6 MR. DUBIN: Thank you.

7 Q How long were you at Galleon?

8 A I was at Galleon a little under four years.

9 Q Did you have different jobs while you were at Galleon?

10 A I was a consumer analyst for the first two years and then
11 I became a consumer portfolio manager and then I was the head
12 of the consumer research group.

13 Q And what caused you to leave Galleon in 2009?

14 A I actually left, I think it was JAN 1, 2009 or DEC 1,
15 2008. We mutually agreed -- Galleon was a hedge fund.
16 Remember, 2008, the world kind of melted down a little bit.
17 Galleon was shrinking. They were asking many of the portfolio
18 managers to give up their portfolios and just be analysts for
19 the larger fund. I didn't want to do that, I wanted to
20 continue to be a portfolio manager. So I -- we mutually
21 agreed that I would leave.

22 Q Now, while you were working at Galleon, did you ever make
23 a trade that concerned you?

24 A I did.

25 Q What was the trade that concerned you?

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Pierotti - direct - Pitluck

5845

1 A It was a trade in Smucker's, you know, the jelly company.

2 Q And why did that trade in Smucker's concern you?

3 A I knew that the people who came to me internally at
4 Galleon were privy to information that had come from an
5 insider at another company.

6 Q So, you had nonpublic inside information that had been
7 communicated to you?

8 A Yes.

9 Q And who told you that nonpublic information?

10 A Two guys came to me at the same time, a guy named John
11 O'Connor and a guy named R.K. Rajaratnam.

12 Q And did you learn the source of that nonpublic
13 information from those two gentlemen?

14 A I did.

15 Q Who was the source?

16 A The source was a guy name Rajat Gupta.

17 Q Who was Rajat Gupta?

18 A Rajat Gupta had been the global head of the McKinsey
19 Group. He was also a board member of Goldman Sachs and
20 Procter & Gamble.

21 Q Now, did anybody ask you to make that trade in Smucker's?

22 A Nobody directly asked me to make that trade, no.

23 Q Did you discuss that trade with anybody at Galleon?

24 A I did.

25 Q Who did you discuss it with?

Pierotti - direct - Pitluck

5846

1 A I discussed it with Raj Rajaratnam, R.K. Rajaratnam John
2 O'Connor, and Mike Cardillo.

3 Q And what specifically did you say to Raj Rajaratnam about
4 the trade in Smucker's?

5 A I thought it was -- one, I thought it was a trade that
6 they shouldn't do because it was coming from an insider, but I
7 also thought it was immaterial or non-impactful to each of the
8 two stocks.

9 Q What do you mean by that?

10 A Well, it was a reverse mortgage stress transaction
11 where -- everybody knows the Folgers brand, Folgers coffee.
12 Procter & Gamble was trying to sell assets that were slower
13 growing.

14 Smucker's is a very slow growing company. An old
15 coffee brand fit in with Smucker's, kind of an old slow growth
16 jelly brand, better than it did with Procter & Gamble. And it
17 was clear to me that this was a transaction that would be a
18 bit of a wash for both sides. In other words, Smucker's would
19 get this asset, but it was a non-growth asset, but they would
20 only do it if it would be a couple cents positive for them for
21 their earnings. I just thought it wouldn't be impactful.

22 Q When you say impactful, do you mean on the stock price?

23 A Yes.

24 Q Was this based on your analysis of that company at
25 Galleon?

Pierotti - direct - Pitluck

5847

1 MR. DUBIN: Your Honor, I object to the leading.

2 MR. PITLUCK: I'll rephrase, Judge.

3 Q What was your conclusion based upon?

4 A My conclusion was just based on knowing Procter & Gamble
5 very well, knowing the food industry well. This is what I
6 did. I covered staples companies mostly, staples being, you
7 know, CPG, consumer products.

8 Q Did you make that trade in Smucker's?

9 A I did.

10 Q Why did you make the trade?

11 A I actually felt pressured by Raj to be involved in the
12 trade.

13 Q And who was Raj Rajaratnam at Galleon?

14 A Raj Rajaratnam was the founder and CIO, he was a
15 billionaire, of the Galleon Group.

16 Q When you made that trade, did you believe you committed
17 insider trading?

18 A I didn't.

19 Q Why not?

20 A Because I just didn't think it was material. I just did
21 not think that it would have any impact on the share price. I
22 just felt like there was no intention really to try to make
23 any money and it didn't.

24 Q How many shares did you trade?

25 A As I recall, it was 20,000 shares, and you're talking --

Pierotti - direct - Pitluck

5848

1 go ahead.

2 Q Excuse me. And after you made that trade, did you ever
3 bring concerns about the trade to anyone?

4 A Ultimately, I did, yes.

5 Q Who did you bring the concerns to?

6 A To, to federal authorities.

7 Q Which federal agency did you first report your concerns
8 to?

9 A I believe the first call was to the SEC.

10 Q Securities and Exchange Commission?

11 A Yes.

12 Q And what information did you provide to the SEC?

13 A I just told them everything I knew, I told them
14 everything I knew surrounding that trade and other things I
15 had observed while at Galleon.

16 Q And when you reported your concerns to the SEC, were you
17 still employed at Galleon?

18 A I was not.

19 Q Was Raj Rajaratnam still working at Galleon?

20 A No. Raj, I think Raj had already been arrested.

21 Q Now, after you spoke to the SEC, did other law
22 enforcement agencies contact you about the trade in Smucker's?

23 A Yes.

24 Q Which agency was that?

25 A I spoke to the Southern District of New York, I spoke to

Pierotti - direct - Pitluck

5849

1 the FBI and the SEC.

2 Q Now, the Southern District of New York, do you mean the
3 U.S. Attorney's Office within the Southern District of
4 New York?

5 A Yes, yes.

6 Q What did you tell prosecutors -- withdrawn.

7 When did you first speak to prosecutors in the
8 Southern District of New York?

9 A Mid -- so it would have been mid-2009, maybe kind of fall
10 2009.

11 Q Now, let me show you something to -- is there a document
12 that might refresh your recollection as to the exact date that
13 you spoke to them?

14 A I'm sure there are.

15 Q We'll come back to this in a moment.

16 A Okay.

17 Q At the time -- so where did you go after you worked,
18 after you left Galleon Group?

19 A So, after I worked at the Galleon Group, I started at a
20 place called Incremental Capital in early 2009.

21 Q And what did you do at Incremental Capital?

22 A I was a trader and portfolio manager.

23 Q And how long did you work there?

24 A Only about eight months.

25 Q And what happened that you left Incremental Capital?

Pierotti - direct - Pitluck

5850

1 A The -- a number of people who left Galleon went to
2 Incremental. One of the guys who had been a founder of
3 Incremental had briefly worked with us at Galleon. He wasn't
4 technically a Galleon employee. And then those guys were
5 caught up in the insider trading issues with Raj come like
6 November 2009.

7 Q Now, were you involved in any insider trading in
8 Incremental?

9 A No, zero.

10 Q What did you do after you left Incremental?

11 A After Incremental collapsed with those guys getting
12 arrested, I started my own prop. trading firm hiring a number
13 of former traders at Galleon and former traders at
14 Incremental.

15 MR. DUBIN: Can we have a time period, please?

16 THE WITNESS: Yes. I would have started working on
17 that right at the end of 2009 and worked on it, and it had a
18 couple different iterations until, you know, mid-2011.

19 Q I want to go back a moment to your discussions with the
20 federal prosecutors in the Southern District of New York.

21 A Yes.

22 Q Did you meet with them and with FBI agents?

23 A I did.

24 Q Once or more than once?

25 A Oh, more than once.

Pierotti - direct - Pitluck

5851

1 Q And did there come a time that you were asked to testify
2 at a trial by federal prosecutors in the Southern District of
3 New York?

4 A I was.

5 Q Which trial were you asked to testify against?

6 A The trial of Rajat Gupta.

7 Q Now, in connection with your anticipated testimony, did
8 you enter into any agreement with the government, the
9 prosecutors in the Southern District of New York?

10 A I did.

11 Q What kind of agreement did you enter?

12 A It was called a non-prosecution agreement.

13 Q Did you ask for the non-prosecution agreement?

14 A Not that I recall.

15 Q And generally, in your -- if you remember, what did that
16 agreement provide for?

17 A It just provided that there would be no prosecution on
18 the Smucker's transaction and that I would testify truthfully.

19 Q And so if you believed that you didn't commit insider
20 trading, why did you sign that agreement?

21 A I didn't see any downside to it and it was offered to me.

22 Q Did you have a lawyer present when you met with the
23 Southern District of New York?

24 A At no point, no.

25 Q Did you have a lawyer with you when you signed the

Pierotti - direct - Pitluck

5852

1 non-prosecution agreement?

2 A No.

3 Q Did you, in fact, testify in that case against Rajat
4 Gupta?

5 A I did not.

6 Q And were you expecting to testify?

7 A The day I signed the non-prosecution agreement, the
8 prosecutor said, You could expect to be on tomorrow.

9 Q So you signed the non-prosecution agreement the day
10 before you were expected to testify?

11 A Yes.

12 Q So, are you familiar with an individual named Martin
13 Shkreli?

14 A I am.

15 Q How did you first meet Martin Shkreli?

16 A I was, I was put together with Martin by a guy who I'm
17 friends with in Summit, New Jersey.

18 Q And what were the circumstances that connect, that
19 connected you to Martin Shkreli?

20 A My friend in Summit is a guy named Tom Quinn and Tom is a
21 CFO, COO for hedge funds and he helps to raise monies for
22 hedge funds.

23 He had met with Martin and when he met with Martin,
24 Martin said, I'm really looking for a consumer portfolio
25 manager. And my friend Tom said, I got the guy for you. We

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Pierotti - direct - Pitluck

5853

1 were friends and he knew I was struggling with my -- it's
2 called a proprietary trading business. It's a little
3 different. It's, like, a small hedge fund. He knew that was
4 struggling and said, You ought to meet my friend Tim Pierotti,
5 and we put it together, we met.

6 Q So, where was your first meeting with Mr. Shkreli?

7 A First meeting was at the temporary office space that MSMB
8 had on Madison Avenue.

9 Q Who attended that first meeting?

10 A I believe -- oh, just Martin and I. It's possible Kevin
11 Mulleady was there as well.

12 Q What were the -- what was the topic of discussion at that
13 first meeting?

14 A Martin just said that he was, could raise money for a
15 consumer fund, that he thought that my background would work
16 to raise money. He liked my track record, I had good numbers
17 and he wanted to hire me right off the bat.

18 Q In that first meeting, did you ever discuss a company
19 called Retrophin?

20 A No.

21 Q Do you remember approximately when this first meeting
22 was?

23 A You know, it would have been like August, September
24 maybe, a little earlier than that probably even, maybe July,
25 August of 2011.

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Pierotti - direct - Pitluck

5854

1 Q Did you accept the job after that first meeting?

2 A No. We, we had dinner maybe a week or so after that
3 first meeting.

4 Q Who attended that dinner?

5 A That dinner was Martin Shkreli, Marek Biestek and Kevin
6 Mulleady and myself.

7 Q And was that -- where was that dinner?

8 A It was at an Italian restaurant somewhere on the Upper
9 East Side.

10 Q And what did you discuss at that first meeting or that
11 dinner meeting on the Upper East Side?

12 A We just talked about how it would work. They wanted me
13 to do it. I asked them a lot of questions and they asked me a
14 lot of questions and I remember, I took a car service with
15 Martin back down, you know, towards Midtown and he laid out
16 the numbers that he could offer me and we shook hands on it.

17 Q And by numbers, what do you mean?

18 A Salary or upfront money.

19 Q Now, during your initial meetings with Martin Shkreli,
20 did you tell him about your experience at Galleon?

21 A He knew, he knew all about my experiences at Galleon. He
22 had already checked my references and he knew other Galleon
23 people.

24 Q Did you decide to take the job with Martin Shkreli?

25 A I did.

Pierotti - direct - Pitluck

5855

1 Q Why did you decide to take the job?

2 A It was the best opportunity I had at the time.

3 Q What was the name of the hedge fund that Martin Shkreli
4 asked you to run?

5 A We ended up naming it MSMB Consumer.

6 Q And was it named as of your first meeting or was it more
7 amorphous than that?

8 A It was more amorphous than that.

9 Q So it was named after you accepted the job?

10 A Yes.

11 Q So, Mr. Pierotti, there's a binder of documents in there
12 in front of you. If you could, I'd like you to open tab one
13 which is Government Exhibit 112-1 for identification.

14 Do you recognize that document, Mr. Pierotti?

15 A Yes, sir.

16 Q What is that document?

17 A It was just the agreement, like the employment agreement
18 that I signed with Kevin Mulleady and Martin Shkreli to get
19 started at MSMB.

20 Q And on the last page of that document, Pierotti-035, is
21 that your signature?

22 A Yes, it is.

23 MR. PITLUCK: Your Honor, we offer Government
24 Exhibit 112-1.

25 MR. DUBIN: No objection, Your Honor.

Pierotti - direct - Pitluck

5856

1 THE COURT: We receive Government Exhibit 112-1.
2 (So marked.)

3 Q Can we highlight the first paragraph.

4 What date was this agreement entered into? You can
5 see it in the top paragraph. It's also on your screen.

6 A Oh, August 9, 2011.

7 Q And can you just read after the date who the agreement is
8 between?

9 A Timothy Pierotti, MSMB Healthcare Management LLC and
10 Timothy Pierotti.

11 Q And is the address of MSMB Healthcare Management LLC 330
12 Madison Avenue, sixth floor?

13 A Yes, it was at that time.

14 Q Now, did you know at the time -- withdrawn.

15 This agreement was entered into on August 9, 2011,
16 correct?

17 A Yes.

18 Q Approximately how long after your first meeting with
19 Martin Shkreli did you sign this agreement?

20 A I mean, I don't remember exactly but maybe a month.

21 Q Now, did you have an understanding of what MSMB
22 Healthcare Management was when you signed this agreement?

23 A Kind of a vague understanding.

24 Q What was your understanding of how the MSMB entities were
25 structured when you first joined?

Pierotti - direct - Pitluck

5857

1 A There were a lot of entities and they were all Martin's
2 entities so they were all just basically Martin's different
3 proxies, entities, but Martin controlled all of them.

4 Q Now, let's go to, let's go to the second page of this
5 document or -- I'm sorry. Sorry.

6 Can we go back up and could you read the first
7 "whereas" clause, please?

8 A Whereas, the company is the investment manager of MSMB
9 Consumer Fund LP, a Delaware limited partnership, the fund,
10 and in such capacity, is responsible for making all investment
11 and trading decisions on behalf of the fund.

12 Q And the company is a reference back up to MSMB Healthcare
13 Management LLC?

14 A Yes.

15 Q Can you just read the next "whereas" paragraph as well?

16 A Whereas, the company desires to employ the portfolio
17 manager to provide portfolio management services to the
18 company regarding the fund under the supervision of the
19 company on the terms set forth herein, and the portfolio
20 manager desires to be so employed by the company and act as a
21 portfolio manager for the company on such terms.

22 Q Now, can we just go to the next page, please.

23 Do you see there's some defined terms there. Do you
24 see I and J?

25 A Yes.

Pierotti - direct - Pitluck

5858

1 Q One MSMB entity I and J is MSMB Fund?

2 A Yes.

3 Q Do you see Retrophin mentioned in there at all?

4 A I do not.

5 Q Did you know what Retrophin was at the time you started
6 working at MSMB Healthcare?

7 A No.

8 Q Or MSMB Consumer?

9 A No.

10 Q Now, let's go to the third page.

11 What compensation did you discuss with Martin
12 Shkreli?

13 A You can see there on number three, Compensation, \$30,000
14 was given to me up front and then I got a \$10,000 monthly
15 salary.

16 Q Are those the dates that you were given the \$30,000 in
17 two pieces?

18 A I guess. I don't recall.

19 Q But what dates are written next to --

20 A Yes.

21 Q What dates are written next to the 250,000?

22 A 8/9/11 and 8/22/11.

23 Q Did you sign over there on the right?

24 A Yes.

25 Q And how much were you supposed to be paid a month as part

Pierotti - direct - Pitluck

5859

1 of this portfolio agreement?

2 A \$10,000.

3 Q Now, you see, going to the next page, page four of the
4 document, do you see there's a, those are termination
5 sections?

6 A Yes.

7 Q There's a Section B, Voluntary Termination, Termination
8 For Cause?

9 A Yes.

10 Q And termination E is Termination Without Cause?

11 A Yes.

12 Q Did you pay -- did you review those and pay attention to
13 them when you were signing them?

14 A Probably not particularly carefully.

15 Q Now, page seven of this document has a clause at the
16 bottom called "Nondisparagement," do you see that?

17 A Yes.

18 Q Can you read the first half of that paragraph at the
19 bottom?

20 A The portfolio manager agrees that he will not, at any
21 time, during and after his employment, directly or indirectly,
22 make any public comments about and including, without
23 limitation, by way of news interviews or expression of
24 personal views, opinions or judgments to the media or any
25 other person outside the company, any MSMB entity, any

Pierotti - direct - Pitluck

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1 then-current or former officer, director or employee of MSMB
2 entity, together with MSMB entities, the MSMB group, or any
3 client, or disparage, criticize, ridicule or make any negative
4 comments about the MSMB group to any person within the MSMB
5 group.

6 Continue on?

7 Q Yes, please.

8 A Any client or any other person with whom the MSMB group
9 has or may have a business personal relationship including any
10 current former or prospective client or employee. In bold
11 letters, communication with or through the media in any manner
12 is strictly prohibited.

13 (Continued on next page.)

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Pierotti - direct - Pitluck

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1 BY MR. PITLUCK:

2 Q Now, based on your reading of that, Mr. Pierotti, was
3 MSMB required to do anything under this nondisparagement
4 clause?

5 A No.

6 Q Were all those obligations related to you?

7 A Yes.

8 Q Finally, on the last page is that your signature at the
9 bottom?

10 A Yes, sir.

11 Q Who signed on behalf of MSMB Healthcare Management LLC?

12 A Kevin Mulleady.

13 Q What title is given there?

14 A CEO.

15 Q When you started working in -- did you start working
16 soon after you signed this agreement?

17 A I did.

18 Q When you first started in August of 2011 who else was
19 working in the MSMB office?

20 A Allison Russo.

21 Q Who was Allison Russo?

22 A She was really Martin's assistant or secretary, Marek
23 Biestek, Kevin Mulleady. There was a guy that Martin had
24 hired who was a commodity trader whose name I'm not going to
25 come up with. He was only there briefly.

Pierotti - direct - Pitluck

5862

1 Q Anybody else that you remember?

2 A Andy Vaino wasn't in the offices but was an employee,
3 lived in San Diego.

4 Q Anybody else you remember?

5 A I think that's everybody at the outset.

6 Q What was the office set up like when you first started?

7 A It was temporary office space. There was a small office.
8 There were four desks, two opposing, and I was directly
9 opposing Martin and then to my left I can't remember if it was
10 Marek or Kevin that was there at first. Each one of them
11 occupied that particular desk. And then cater corner to me
12 and next to Martin would have been Allison Russo.

13 Q Approximately how big was the office?

14 A I mean small, like a big bedroom size, 20 by 20,
15 something like that.

16 Q Now, after you started working at MSMB Consumer, did you
17 learn about a company named Retrophin?

18 A At some point I did.

19 Q Approximately, if you can estimate, approximately how
20 long after you worked at Retrophin?

21 A I don't know. A few months.

22 Q And what, if anything, did you learn about Retrophin when
23 you first started?

24 A When I first started and again I don't remember that it
25 was Retrophin, but I knew that Martin, my understanding was

Pierotti - direct - Pitluck

5863

1 Martin had his hedge fund, whether it was MSMB Healthcare or
2 MSMB Capital. But then he also endeavored to buy this drug
3 that was for Duchenne Muscular Dystrophy. It was really more
4 of a concept I believe at this point and so he had almost a
5 side business and I guess that is what became Retrophin.

6 Q Did Mr. Shkreli ever give you stock in Retrophin?

7 A Yes, at a much later point.

8 Q When was that?

9 A December of 2012.

10 Q Prior to December 2012 did he ever tell you about giving
11 you any stock or stock options in Retrophin?

12 A He said -- I remember him making an comment at one point
13 that both Allison and I had some de minimis share in what was
14 a private entity.

15 Q Did you ever know how much you had?

16 A I remember a number of 28 shares, but not knowing
17 anything about what that would mean and that it was a private
18 company and I didn't know what the share count was and all
19 that. I just knew it to be a laughably small number because
20 he thought it was laughably small.

21 Q He being Martin Shkreli?

22 A Yes. I'm sorry.

23 Q You testified that you started work at MSMB Consumer in
24 about August 2011, correct?

25 A Yes.

Pierotti - direct - Pitluck

5864

1 Q Now, did you first meet with the Southern District of New
2 York, the prosecution of the Southern District, before or
3 after you started working at MSMB Consumer?

4 A I remember making a phone call to the SEC in those
5 offices. So it had to be after August of 2011.

6 Q I would like to show you what's been marked as Government
7 Exhibit 112-35 for identification.

8 Mr. Pierotti, what's contained on this document.

9 A Allison, Martin's assistant, is speaking to --

10 Q I'm sorry, just generally are these e-mails between you,
11 Allison Russo and others?

12 A Yes.

13 Q Are these dated December 27, 2011?

14 A They start December 8 and go to December 27.

15 MR. PITLUCK: Your Honor, we offer Government's
16 Exhibit 112-35 in evidence.

17 MR. DUBIN: No objection.

18 THE COURT: All right. We will receive Government
19 Exhibit-112-35.

20 (So marked.)

21 Q As you testified a moment ago, Allison Russo was the
22 executive assistant at MSMB Capital?

23 A Yes.

24 Q What was your understanding of the relationship between
25 MSMB Capital and MSMB Healthcare?

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1 A I have no idea the differences between all the entities.
2 There were a bunch of them.

3 Q Let's focus on the bottom e-mail, please?

4 A Okay.

5 Q It is an e-mail from Allison Russo on December 8, 2011?

6 A Yes.

7 Q And is it to Prem B. Jacob, Aneesh Nair and the next to
8 it says NAV Consulting?

9 A Yes.

10 Q Did you know NAV Consulting is?

11 A It's a hedge fund administrator. They consigned to do
12 all the admin work for a hedge fund, back office stuff.

13 Q Now, were you paid directly by MSMB Consumer?

14 A Well, I was paid from wherever I got a check from. But
15 in these it looks like they set up a direct deposit for MSMB
16 Consumer, yes.

17 Q So in that first e-mail it says: As per our revised PPM
18 for MSMB Consumer LP, can we please request a payment for 15K
19 to be paid to Tim Pierotti?

20 A Yes.

21 Q And it has the wiring instructions?

22 A Yes.

23 Q Going up Ms. Russo says, just to you and is anybody
24 copied there?

25 A Martin Shkreli.

Pierotti - direct - Pitluck

5866

1 Q What does Ms. Russo write?

2 A She wrote payment to Tim Pierotti per revised PPM-MSMB
3 Consumer LP. You're owed 10,000 for December, right. I'll
4 request that NAV sets up automatic payment for 5K for the
5 first and fifteenth.

6 Q What was your response to Ms. Russo?

7 A I wrote perfect. Thank you.

8 Q So were you paid by direct deposit on the first and
9 fifteenth of every month?

10 A For awhile, yes.

11 Q During the period that you were paid was it net of tax or
12 gross of tax?

13 A It was gross.

14 Q What does that mean?

15 A There were no taxes taken out.

16 Q Did you have to pay taxes yourself?

17 A Yes.

18 Q Did you have healthcare when you were working at MSMB
19 Consumer?

20 A It was part of the agreement and eventually I did get
21 healthcare, yes. I remember it being a big of a hassle to get
22 started.

23 Q Now did there come a time that -- during your time at
24 MSMB Consumer did you meet an individual named Evan Greebel?

25 A I did.

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1 Q When do you recall first meeting Evan Greebel?

2 A I don't remember exactly the first time we met. I think
3 it was probably after a couple of months or a month maybe. I
4 just don't remember.

5 Q Who introduced you to Mr. Greebel?

6 A Martin Shkreli.

7 Q Where did you first meet Mr. Greebel?

8 A You know, I can remember all of these things from the
9 time frame of being in that office and then we moved to
10 another office and I know I met him in that first office.

11 Q Approximately how often did you see Mr. Greebel in that
12 first office?

13 A A few times.

14 Q And at the time you met him who did you think Mr. Greebel
15 represented?

16 A I thought he was an attorney for Martin and for MSMB.

17 Q Turning back to MSMB Consumer, the fund that you had.

18 A Yes.

19 Q Was there any money in the fund when you first started
20 working in approximately August 2011?

21 A Not when I first started. It was not funded until I
22 think the end of October 2011.

23 Q Approximately how much money was put into the fund?

24 A I want to say maybe in the neighborhood of three million
25 dollars, which was significantly less than it was supposed to

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1 be.

2 Q When you say significantly less than it was supposed to
3 be, what is that based on?

4 A Martin had assured me when I started he could start me
5 with \$10 million.

6 Q Why was that important to you?

7 A Well, the salary was really only going to come out of the
8 management fees and if you don't have a meaningful amount of
9 capital then there are going to be no management fees even if
10 you have great performance.

11 Q And did you learn where the approximately three million
12 dollars came from to start MSMB Consumer?

13 A My understanding was that it came out of some other MSMB
14 entity. My understanding was that there were larger MSMB
15 entities.

16 Q Were there any actual investors directly into MSMB
17 Consumer?

18 A The only other investor besides Marek, you know, Martin.
19 When it was Capital Healthcare was Steve Richardson.

20 Q Do you remember how big Steve Richardson's investment in
21 MSMB Consumer was?

22 A I think it was \$50,000.

23 Q Did you actually meet with Steve Richardson when you were
24 trying to raise money for MSMB Consumer?

25 A I did.

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5869

1 Q After that meeting did he invest?

2 A I don't remember if he made that investment just on
3 Martin's, you know, advice before or after.

4 Q Did you meet with other individuals and entities to try
5 to raise money or capital for MSMB Consumer?

6 A I did.

7 Q Was Martin Shkreli with you at those meetings?

8 A Yes. Not at every single one. The vast majority of
9 them, yes.

10 Q And did any of those other meetings result in direct
11 investments in MSMB?

12 A No.

13 Q Do you know if Martin Shkreli sent out solicitation
14 material to potential investors?

15 A He did.

16 Q What did those solicitation materials consist of?

17 A It would have been -- it was three separate documents.
18 It would be like the PMB.

19 Q What's a PMB?

20 A Like a portfolio. I forget what PMB stands for.

21 Q Can you describe what it is?

22 A It describes the rules of the funds. It would say this
23 manager is allowed to buy stocks, short stocks. He's not
24 allowed to trade in currency. So it just gives you the rules
25 of what is allowed, the parameters of the fund.

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1 Q What were the other documents?

2 A It would have been the marketing effect.

3 Q What's a marketing effects?

4 A It just an advertisement for the fund and a solicitation,
5 why somebody should invest in the fund, who I am, what the
6 structure is around it, what the risk management process is,
7 my track record, things like that.

8 Q So it included a section on you and your background?

9 A Yes.

10 Q Did that section discuss your employment at Galleon?

11 A Yes.

12 Q It's included your trading track record at Galleon?

13 A Yes.

14 Q Did you put that marketing deck I think you called it,
15 did you put that together?

16 A Martin mostly helped me put it together.

17 Q Did you review it before it went out?

18 A Yes.

19 Q You testified a moment ago that money came into the fund
20 in about October 2011, correct?

21 A Yes.

22 Q Did you start investing money after that?

23 A Yes.

24 Q What was the fund's performance between when you first
25 started investing in October of 2011 and the end of 2011?

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1 A I don't remember exactly what it was.

2 Q Generally?

3 A It was very good. My biggest position was bought by
4 another company. It was a small supermarket company, Winn
5 Dixie down in the southeast United States.

6 Q And what about in 2012, how was the performance in early
7 2012?

8 A It was flat for the first few months of the year and then
9 we changed strategies to -- because there was so little
10 capital we decided to change strategies and just invest in one
11 particular entity.

12 Q And when you say so little capital, what do you mean?

13 A We never raised any money and Martin had reduced, had
14 taken money back from the original investment. So I think we
15 only had about \$2 million which is not -- sounds like a lot
16 of money but is not a viable hedge fund.

17 Q When you said we changed strategies, who the we?

18 A I'm sorry. Martin and I.

19 Q What strategy did you adopt after the fund size got
20 reduced to \$2 million?

21 A We decided we would be an activist investor in a company
22 that we felt like we could make some noise and force
23 management to make different decisions.

24 Q Can you explain to the jury what an activist investor is?

25 A So an activist investor makes an investment in a company

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1 and then makes a lot of noise, either in the public or through
2 a proxy, through a formal process, to say we think management
3 is doing the wrong things. We think they ought to do this. I
4 won't get ahead of myself. In this case we thought there was
5 a lot management should do differently.

6 Q Did you choose a company to pursue this strategy with?

7 A Yes.

8 Q What company was that?

9 A The name of the company is Rick's Cabaret.

10 Q What was Rick's Cabaret?

11 A Rick's Cabaret is, was at the time 35 different strip
12 clubs around Texas, New York, Minnesota, Florida.

13 Q Why was Rick's Cabaret the target for your new activist
14 strategy?

15 A For one, that business generates a tremendous amount of
16 cash flow and it was a poorly understood business. In other
17 words, you wouldn't ever want to own one strip club because
18 you are subject to local changes. Usually in most strip clubs
19 you have to renew your license actively every year. But if
20 you own 30 of them in all these states and jurisdictions it's
21 actually an incredibly consistent cash flow in recessions, any
22 kind of weather, it's a good business and it's a business that
23 you don't have to reinvest in the business much. These
24 businesses don't change.

25 Well, the management of this company, it was a

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1 fairly small entity, it was like a 90 million dollar market
2 cap at the time. The CEO had two planes. He had a general
3 manager who I believe was skimming a tremendous amount of cash
4 off the business. I thought there were very easy things we
5 could do to make the stock go up by quite a bit.

6 Q Did you discuss this idea with Mr. Shkreli?

7 A He loved it.

8 Q He loved it?

9 A Yes, sir.

10 Q After you discussed it with Mr. Shkreli did he tell you
11 to speak to anybody outside of MSMB Consumer about investing
12 in Rick's Cabaret?

13 A He told me to speak to Evan.

14 Q Why did you-- did you speak to Evan Greebel?

15 A I did.

16 Q Why?

17 A Well, frankly, I had never been an activist investor
18 before. I had just been a consumer portfolio manager and I
19 needed to understand the dynamics of how we could force our
20 will upon management. So I needed somebody who was an
21 attorney who understood how the business was incorporated,
22 where it was incorporated what the rules were in terms of
23 forcing a proxy vote, etcetera.

24 Q Did you talk at that Evan Greebel about investing in
25 Rick's Cabaret?

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5874

1 A I did.

2 Q What do you remember him saying?

3 A I remember him calling me back and saying, so do you want
4 the good news or the good news.

5 Q What did he tell you after that?

6 A He said the good news was the fact that it was Texas
7 incorporated it meant that we only had to own five percent of
8 the total shares outstanding in order to force a proxy vote.

9 Q Now, --

10 A I frankly don't remember what the other good news was,
11 but I remember that.

12 Q Did the you actually -- did MSMB Consumer actually make
13 a investment in Rick's Cabaret?

14 A We did.

15 Q How did that turn out?

16 A Martin took the money back, so we had all of the assets
17 in Rick's Cabaret. For what it's worth it was a seven dollar
18 stock. It is a 31 dollar stock today and but Martin took all
19 the money, pulled all the money out.

20 Q Now, you just testified that Martin pulled all the money
21 out. What did you mean by that?

22 A I just mean he pulled all the money. He said I need the
23 money. You've got to sell all the stock.

24 Q To pull the money out of MSMB Consumer?

25 A Yes.

Pierotti - direct - Pitluck

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1 Q Did he tell you why he needed all the money out of MSMB
2 Consumer?

3 A Not that I recall.

4 Q Do you remember approximately when this was?

5 A It would have been July issue 2012.

6 MR. DUBIN: Your Honor, would have been, was it, or?

7 THE WITNESS: My best recollection it was around
8 July 2012.

9 THE COURT: When you say it would have been, you're
10 meaning to say it was my best recollection?

11 THE WITNESS: Yes. I'm sorry.

12 THE COURT: It's just a pattern of speech that we
13 all now understand. Okay. Proceed.

14 MR. PITLUCK: Thank you, your Honor.

15 Q Did Mr. Shkreli tell you why he was taking money out of
16 the MSMB Consumer?

17 A No.

18 Q What steps did you take to start shutting down MSMB
19 Consumer?

20 A Martin wanted me to sell all the stock immediately.

21 Q And did you start selling the stock?

22 A I did.

23 Q How did you start selling it?

24 A Slowly, because we had over \$2 million worth of stock and
25 the stock would trade on an average day about 70 thousand, 80

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1 thousand dollars worth of stock. So if you want to sell two
2 million shares you're going to put tremendous pressure on the
3 stock.

4 Q Did you continue to sell all of MSMB Consumer stock and
5 Rick's Cabaret slowly?

6 A Yes, until Martin said I need the money tomorrow, sell it
7 all.

8 Q Did you do that?

9 A I did.

10 Q Did he tell you why he needed all the money tomorrow?

11 A No, sir.

12 Q Now, after all the money was taken out of MSMB Consumer,
13 what did you believe your job was going to be?

14 A The idea was we were going to start looking at special
15 projects and we started looking at a project. An investment
16 banker showed us an asset in Northern Wisconsin, the company
17 that made laboratory cabinets and laboratory -- really basic
18 mill work laboratory equipment.

19 Q How did you get this understanding of what your job was
20 going to be going forward?

21 A He told me either by e-mail or personally. But, yes,
22 that was --

23 Q Who is the he?

24 A I'm sorry. Martin Shkreli.

25 Q Were you working on your own in these kind of projects or

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1 were you working with other people?

2 A I was working with Marek.

3 Q Who is Marek?

4 A Marek would be th MB of MSMB and sort of been Martin's
5 partner.

6 Q What was his name?

7 A Biestek.

8 Q Approximately what was the date that you started working
9 on the different projects?

10 A To my best recollection, September of 2012.

11 Q At that time were you working out of MSMB offices?

12 A I was.

13 Q Which offices were you working out of in that time in
14 2012?

15 A It was still 330 Madison Ave. It would be -- sorry. I
16 don't remember exactly when he moved from 330 Madison Ave to
17 the office on Third Avenue. As I can recall it was around the
18 beginning of 2012.

19 Q The summer of 2012 or the beginning of 2012?

20 A The beginning of 2012.

21 Q And so going back to the summer of 2012 after MSMB
22 Consumer shut down, who was working in the offices with you?

23 A I think Jackson Su was definitely there at the time.

24 Kevin Mulleady was there, Marek Biestek. Andy Vaino was
25 living in San Diego but would spend a week a month in New

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5878

1 York. That was guy named Dr. Chris James who was in the
2 offices. Allison Russo would have ended her employment
3 probably by the end of 2011.

4 Q What kind of projects -- you were all selling in the
5 same small office, correct?

6 A Yes.

7 Q What kind of projects did you see Martin Shkreli working
8 on at this time?

9 A Did I see him working on?

10 Q Yes.

11 A He was working on -- when we say this time, I think
12 we're talking somewhat broadly sort of around the end of 2001,
13 beginning of 2012.

14 Q Let's start there?

15 A Okay. I remember him working on the Duchenne Muscular
16 Dystrophy drug that he was trying to either get or license
17 from a couple of midwestern universities.

18 At some point he bought the Ligand asset, the one
19 million drug from Ligand pharmaceuticals. And then I remember
20 this cabinet company.

21 Q Did you know if he was working through Retrophin on these
22 projects?

23 A I wouldn't have known what entity he was working out of.
24 You know, they were all interchangeable to me.

25 Q Let's fast forward to the summer of 2012 at the time MSMB

Pierotti - direct - Pitluck

5879

1 Consumer shut down.

2 A Yes.

3 Q What was Martin Shkreli working on at that time?

4 A Yes. Martin Shkreli at that time was working on raising
5 money for Retrophin.

6 Q And --

7 A Which was those drugs, which was the Ligand drug and the
8 Duchenne Muscular Dystrophy concept.

9 Q And after this medical cabinet company what else did you
10 work on in the fall of 2012?

11 A I found an asset in Heber Springs, Arkansas called
12 Garreco which makes dental gypsum for denture moulds.

13 Q And how did you find Garreco?

14 A I'm originally from Memphis Tennessee and a lot of people
15 who like to fly fish go do Heber Springs, Arkansas to fly
16 fish, it's some of the best fly fishing in the world. We
17 happened to be going through business broker books. Business
18 brokers are like local guys who sell anything from like a
19 restaurant or gas station, but small businesses. It caught my
20 eye because it was in Heber Springs, Arkansas.

21 As we got to look hat it it was a great, great
22 business. The way people make denture moulds hasn't changed
23 in 50 years and it won't change for another 50 years. Gypsum
24 is the same thing you make drywall out of. It was this really
25 cheap input material. They had awesome market share. It had

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1 been a real well run business. I loved it.

2 Q Who were you working on this project with?

3 A Marek and I had decided with Martin's blessing to work on
4 this project.

5 Q Now, were you still technically employed by MSMB Consumer
6 at this time?

7 A Yes, until at some point in the fall of 2012.

8 Q At this point in time were you getting regularly paid by
9 MSMB Consumer?

10 A I was getting regularly paid but the checks were starting
11 to come late and they were coming from different entities and
12 there was no more direct deposit through MSMB Consumer.

13 Q When you say they were coming from different entities,
14 where do you remember them coming from?

15 A It didn't matter to me. It could have been MSMB
16 Healthcare. It could have been MSMB Capital. It could have
17 been Retrophin.

18 Q What was your financial situation personally like at the
19 time?

20 A I was broke.

21 Q Now, are you familiar with company called Wentworth?

22 A Yes.

23 Q What was Wentworth?

24 A Wentworth was just the name of the entity that we created
25 in our effort to buy Garreco.

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5881

1 Q When you say we, what do you mean?

2 A Marek Biestek and I were going to be the two partners.
3 We were the two partners in Wentworth Capital or Wentworth
4 whatever we called it, Wentworth corporation or something like
5 that.

6 Q Where did the Wentworth name come from?

7 A Wentworth is the street I lived on in Summit, New Jersey
8 for the last 12 or 13 years.

9 Q What role, if any, did you see Martin Shkreli having in
10 Wentworth?

11 A Well, Martin originally said that he could make an equity
12 investment. He fairly soon thereafter fell down on that
13 equity investment. But he had been paying Marek and at least
14 he had been paying me a salary for a couple of months. We
15 felt like even though he had in fallen down on his equity
16 capital we would give him some kind of sweat equity piece of
17 the business.

18 Q What does that mean sweat equity?

19 A He owned something even though he had not made a direct
20 capital investment in it.

21 Q Showing the witness what has been marked Government's
22 Exhibit 112-36 for identification. Mr. Pierotti, this is this
23 an e-mail exchange involving you, Evan Greebel and Martin
24 Shkreli and Marek Biestek?

25 A Yes, sir.

Pierotti - direct - Pitluck

5882

1 Q Series of e-mails?

2 A Yes. I'm not on the first one, but I'm on the top one
3 here. I'm not on the first two. But I'm on the top one.

4 Q And these are dated on August 30, 2012?

5 A Yes, sir.

6 MR. PITLUCK: Your Honor, we offer Government's
7 Exhibit 112-36.

8 MR. DUBIN: No objection.

9 THE COURT: We receive Government's Exhibit 112-36.

10 (So marked)

11 Q Let's start on the bottom e-mail from Martin Shkreli to
12 Evan Greebel, copy to Marek Biestek. You are not on this
13 e-mail, correct, sir?

14 A No, sir.

15 Q The subject is new project?

16 A Yes, so Martin writes to --

17 Q Can you read it?

18 A Yes. We are starting a medical technology company,
19 Wentworth Medical. It will be LLC like Retrophin and will
20 probably sell some preferred stock to Retrophin and some other
21 investors at a five to 20 million dollars valuation. It will
22 buy a private company called Garreco in Arkansas. Can you
23 prepare an engagement and we can send some funds?

24 Q This is Wentworth Medical the company that you were just
25 discussing that you had set up with Marek?

Pierotti - direct - Pitluck

5883

1 A Yes.

2 Q Garreco, that the gypsum company?

3 A Yes.

4 Q What was Mr. Greebel's response?

5 A Great. Is there a term sheet on the acquisition? I
6 assume this will not be an affiliate of the Retrophin. How
7 much will you acquire it for?

8 Q Were you copied on this e-mail?

9 A No.

10 Q To Martin Shkreli was copied to Marek Biestek?

11 A Yes.

12 Q What did Mr. Shkreli respond?

13 A Not an affiliate. Acquire it for 9 million. Jahrmarkt
14 -- he's referring to an investor -- Jahrmarkt seems to have
15 committed the financing if we put in two million.

16 Q What was your understanding of what Mr. Shkreli meant by
17 not an affiliate?

18 A It wouldn't in any way affiliated with Retrophin. It was
19 a separate entity.

20 Q Were you familiar with something called Jahrmarkt that
21 had committed financing if we put in \$2 million?

22 A I met with him, his name is Jahrmarkt or Harmar. He is
23 leverage debtor.

24 Q Did you discussions with Mr. Shkreli about putting two
25 \$2 million?

Pierotti - direct - Pitluck

5884

1 A I believe I had, yes.

2 MR. PITLUCK: Your Honor, now might be a good time
3 for a quick midafternoon break. I apologize.

4 THE COURT: All right.

5 We'll allow the jurors to take a break. Five to ten
6 minutes. We will retrieve you as soon as we can.

7 Thank you very much.

8 (Jury excused.)

9 THE COURT: You can also step out and stretch if you
10 like.

11 (Witness excused.)

12 THE COURT: All right. Let's take ten. No more.
13 No more than ten. Thank you.

14 (Recess taken.)

15 (Continued on next page.)

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1 (In open court.)

2 (Judge KIYO A. MATSUMOTO enters the courtroom.)

3 (Jury enters.)

4 THE COURT: All jurors are present. Please have a
5 seat.

6 You may resume Mr. Pitluck.

7 MR. PITLUCK: Thank you, Your Honor.

8 BY MR. PITLUCK:

9 Q Mr. Pierotti, before we broke you were talking about
10 Wentworth; correct?

11 A Okay, yes.

12 Q Around that time that you had formed Wentworth, were you
13 working on any other projects with Marek Biestek?

14 A No, that was it. We were just trying to figure out how
15 to pay for Garreco. The guy's name was Garrett. So they
16 called it Garreco.

17 Q Where were you working from during this Garreco -- the
18 early parts of this Garreco transaction?

19 A I was working mostly in the office on Third Avenue, but I
20 was also working from home, and I was going back and forth to
21 Arkansas quite a bit.

22 Q And at that point in time, when you were working on
23 Garreco, who else was working out of the offices out of MSMB
24 offices?

25 A So, Marek and I were at the end of row in one room

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1 together. Guy named Ron Tilles was in the office next.

2 Q What was Ron Tilles's role?

3 A Ron Tilles had been a guy who raised money for hedge
4 funds. He had come aboard to work for Martin, I thought, to
5 raise money for MSMB Capital or Healthcare, whichever, entity.

6 And then as you go down, there was a guy named
7 George Huang, might be another office in there, but then there
8 was Martin Shkreli in the corner. Next to him was Tom
9 Fernandez and then Kevin Mulleady.

10 And then there was a Michael Smith who had replaced
11 Allison as Martin's assistant, and then, very late in the
12 game, Martin's sister came to work there as well.

13 Q What was her role in the company?

14 A I couldn't really tell you. It was more office manager,
15 I think.

16 Q Now, did you -- did there come a time around this period
17 that Martin Shkreli formally notified investors that he was
18 winding down his hedge fund operations?

19 A Yes.

20 Q And how were they notified?

21 A I remember seeing an e-mail.

22 MR. PITLUCK: Can you flip to tab 32. It's marked
23 for identification as Government's Exhibit 112-32.

24 THE COURT: Pause for one second.

25 (Pause in the proceedings.)

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1 THE COURT: Let's start over, please, from -- with
2 the exhibit.

3 MR. PITLUCK: Yes. It's Government's Exhibit 112-32
4 for identification.

5 BY MR. PITLUCK:

6 Q Do you recognize that document, Mr. Pierotti?

7 A Yes.

8 Q And is this the e-mail that you recall that you received
9 about winding down MSMB hedge funds?

10 A Yes.

11 MR. PITLUCK: Your Honor, we offer Government's
12 Exhibit 112-32 into evidence.

13 MR. DUBIN: No objection.

14 THE COURT: All right. We receive 112-32.

15 (Government's Exhibit 112-32 received in evidence.)

16 (Exhibit published to jury.)

17 BY MR. PITLUCK:

18 Q What's the date of this e-mail, Mr. Pierotti?

19 A September 9, 2012.

20 Q And who's it from?

21 A From Martin Shkreli.

22 Q And what's the subject line?

23 A Message from MSMB Capital.

24 Q Now, at this point in time, in September 2012, there is
25 no money in MSMB Consumer; correct?

Pierotti - direct - Pitluck

5888

1 A Correct.

2 Q Okay. Can you read the first paragraph please.

3 A I have decided to wind down our hedge fund partnerships
4 with a goal of completing the liquidation of the funds by
5 November or December 1st, 2012. As you know, MSMB has found
6 increasingly compelling opportunities in private equity. We
7 are going to focus our efforts on managing money in a hybrid
8 public private structure, one which is not generally amenable
9 to the open-ended private hedge funds partnership structure.

10 Q And excuse me, can you read the next paragraph, too,
11 please.

12 A We have decided the best structure for such an entity is
13 a public company or private corporation. Retrophin LLC, our
14 MSMB founded biotechnology operation, will be that company.
15 Retrophin has made a lot of progress since its inception in
16 2011. Today, the company has a full pipeline and several
17 marketed (cash generating) products. Retrophin is currently
18 valued at a modest \$80 million, but I personally feel the
19 shares are worth closer to \$1 billion and will reach that
20 lofty number when all is said and done. We anticipate taking
21 the company public in the first half of 2013. We will see
22 what the market thinks then.

23 Q Now, at this point in time, had you ever done any work
24 related to Retrophin?

25 A No.

Pierotti - direct - Pitluck

5889

1 Q Did you know anything about Retrophin?

2 A As I've said, I knew that he had -- that we were trying
3 to get that Duchenne Muscular Dystrophy asset and he had
4 bought the Ligand asset.

5 Q But you learned of that by being in the office?

6 A Yes.

7 Q But you hadn't done anything else for Retrophin?

8 A No..

9 Q Now, the e-mail goes on to describe some of the people
10 who are working with Martin Shkreli.

11 Can you read the -- from where it says the most
12 senior hire.

13 A Beginning paragraph 3?

14 Q Yes please.

15 A The most senior hire we have made is that of Thomas
16 Fernandez, who joins after ten plus years with the Galleon
17 Group, where he was the original COO, chief operating officer,
18 of the company, and headed up the IR effort. Tom will hold
19 the title of president at MSMB.

20 Q And you saw the reference there to Tom Fernandez spending
21 ten plus years at Galleon Group.

22 Did you know Tom Fernandez prior to his joining
23 MSMB?

24 A I did and I introduced him to Martin.

25 Q And then it goes on. Many of you have met Jackson Su,

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1 our current COO. Jackson handles all operational matters
2 including HR, IT, and finance.

3 Can you read what it says from Marek Biestek please.

4 A Marek Biestek, my co-founder and partner and I, round out
5 MSMB's executive committee. This four-person team will manage
6 MSMB's operations going forward and even though we will not be
7 running, quote unquote, outside money, we will still have
8 activities independent of Retrophin.

9 Q And excuse me, can you read the next paragraph, too, with
10 another key hire?

11 A Another key hire at MSMB is that of George Huang, Ph.D.
12 who comes to us from the recently shuttered Tiger Cub
13 Sabretooth. We have very high hopes for George. He, and a
14 new hire, Dr. Christopher James, an actual brain surgeon, join
15 the biotechnology with Dr. Andrew Vaino, who has been with
16 MSMB for some time. These three pedigreed individuals
17 contribute in a great way to our firm.

18 Q You testified a moment ago about Mr. Huang being in the
19 office, and you testified about the other two people as well.

20 Did you know what kind of tasks they are doing at
21 MSMB during this time period?

22 A I know George Huang, I worked with, when we were trying
23 to do that cabinet thing. But he was a guy who had real
24 investment banking background. So he could do corporate
25 finance work for Martin.

Pierotti - direct - Pitluck

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1 Q Okay. And finally, can you read the last paragraph on
2 this page.

3 A Tim Pierotti, who manages MSMB's consumer investing
4 efforts, is broadening his role in teaming up with Marek
5 Biestek in looking at medical technology assets.

6 Kevin Mulleady, our original CEO and investor
7 relations head, is doing well. He has expanded his role into
8 business development across the capital structure and
9 continues to manage client relationships.

10 Q Is that consistent with what you believed your role was
11 at the time?

12 A Yes.

13 Q And then it continues on from there, but I think we read
14 enough.

15 A Yeah, Retrophin has hired --

16 Q That's okay.

17 A Oh, okay.

18 Q Now, did there come a time that you began discussing your
19 formal termination from MSMB Consumer with Martin Shkreli?

20 A Yes.

21 Q And how did that come about?

22 A Well, as the fund -- as there was no money in the funds,
23 and Marek and I recall going down the path of Wentworth, and
24 Martin was forming Retrophin as the focus of all of his
25 attention, he said, you guys, you know, you can't be in this

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1 office space anymore. And we agreed with that. There was no
2 reason for us to still be there.

3 And he said, let's sign a termination agreement, or
4 let's, you know, I'll give you -- he offered me a severance
5 and termination.

6 Q And at that point in time, were you getting paid
7 regularly?

8 A I was getting some money, reduced money, late money. So
9 not super regularly, but it was better than nothing.

10 MR. PITLUCK: So I'd like to have you open to tab 4,
11 which is marked for identification as Government's
12 Exhibit 112-4.

13 Q Do you recognize this document?

14 A Yes.

15 Q Is this an e-mail between you and Martin Shkreli dated
16 October 10th, 2012?

17 A Yes.

18 MR. PITLUCK: Your Honor, we offer Government's
19 Exhibit 112-4.

20 MR. DUBIN: No objection.

21 THE COURT: We receive Government's Exhibit 112-4.

22 (Government's Exhibit 112-4 received in evidence.)

23 (Exhibit published to jury.)

24 BY MR. PITLUCK:

25 Q What's the subject line of this e-mail, Mr. Pierotti?

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1 A Offer is still good.

2 Q And can you read the first sentence.

3 A I would be happy to take half of the 45,000 now, versus
4 waiting for the deal to close. I heard you say --

5 Q I'm going to stop you right there.

6 You said I would be happy to take half of the 45K
7 now, what does that mean?

8 A In terms of he had offered me \$45,000 severance to be
9 paid at a later date.

10 Q \$45,000 severance as part of departure from
11 MSMB Consumer?

12 A Yes, sir.

13 Q And the reference to waiting for the deal to close, what
14 does that mean?

15 A I honestly don't know what deal he was talking about at
16 that point.

17 Q I'm sorry. You wrote that, Mr. Pierotti?

18 A Versus waiting for the deal to close. I heard you say
19 you have had some success in the recent friends and family
20 round, so I hope you will take me up on the offer.

21 Yeah, I guess I thought he was closing some private
22 financing.

23 Q And did you reach a deal with Martin Shkreli related to
24 severance payments?

25 A We did.

Pierotti - direct - Pitluck

5894

1 Q How much did you actually decide on with Mr. Shkreli?

2 A 20,000.

3 Q And did you receive it all the ones?

4 A No. I received four checks for \$5,000 as I recall.

5 Q And where did the money come from for each of those?

6 A I guess various entities.

7 THE COURT: Do not guess.

8 MR. BRODSKY: I'm sorry.

9 THE WITNESS: I'm sorry.

10 A I don't recall exactly.

11 Q And do you recall who -- withdrawn.

12 What was your financial situation like at this time?

13 A Yeah, I didn't have any money. I was hanging on.

14 MR. PITLUCK: I'd like to show you what's

15 Government's Exhibit 112-5 for identification. It's tab five
16 in your binder.

17 Q Is this an e-mail exchange, series of e-mails, between
18 yourself and Mr. Shkreli?

19 A Yes, sir.

20 Q And they're all dated October 11th, 2012?

21 A Yes.

22 MR. KESSLER: Your Honor, we offer Government's
23 Exhibit 112-5 in evidence.

24 MR. DUBIN: No objection, Your Honor.

25 THE COURT: We receive Government's Exhibit 112-5.

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1 (Government's Exhibit 112-5 received in evidence.)

2 (Exhibit published to jury.)

3 BY MR. PITLUCK:

4 Q Let's start with the bottom e-mail.

5 A Do you want me to read it?

6 Q It's an e-mail from you to Mr. Shkreli on October 11th,
7 2012?

8 A Yes.

9 Q Is that the day following the day after the previous
10 e-mail we just saw in Government's Exhibit 112-4?

11 A That one was October 10th? Yup, sure is.

12 Q And what did you write in that e-mail?

13 A I wrote: Firstly, thanks I thinks for making the
14 introduction to Bausch & Lomb. Secondly, I just want to
15 confirm that we are going to do 5K today, and 5K a week for
16 the following three weeks, to satisfy the severance. Thanks
17 again.

18 Q You see the reference to Bausch & Lomb?

19 A Yes.

20 Q Do you recall what that was in reference to?

21 A I don't. I don't.

22 Q And when you wrote, secondly, I just want to confirm we
23 are going do 5K today and 5K a week for the following three
24 weeks.

25 Is that a reference to the \$20,000 you agreed to?

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1 A Yes.

2 Q And going up from there, to the next e-mail, what did
3 Mr. Shkreli write?

4 A He wrote -- I will -- do you have a resume or can you put
5 one together?

6 Do you agree that 5K today and 5K a week for three
7 weeks will satisfy your severance?

8 Q Do you know why Mr. Shkreli was asking for your resume?

9 A I'm assuming it's in reference to Bausch & Lomb, but I
10 don't know.

11 THE COURT: Do not assume, to the best of your
12 recollection.

13 THE WITNESS: I don't know.

14 Q Okay. And what was your response?

15 A Not sure my account is set up.

16 Q Sorry. One more up.

17 A Okay, I will drop a document -- no, that's him.

18 I will get you a resume. I agree that 20K over four
19 weeks, and starting today, will satisfy the severance.

20 Q What was Mr. Shkreli's response?

21 A Okay. I will draw up the document, but will send some
22 funds right now.

23 Q Did you know, at that time, what kind of document he was
24 talking about?

25 MR. DUBIN: Your Honor, I think that the witness

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1 misread that.

2 THE WITNESS: Okay. Which line?

3 THE COURT: Do you want to just read your response
4 one more time.

5 Was it Mr. Shkreli's response?

6 MR. DUBIN: No. The witness said, I will drop the
7 document. The document says, okay, I will draw up a document.

8 BY MR. PITLUCK:

9 Q So, Mr. Pierotti, just to make sure the record's clear,
10 can you read Martin Shkreli's e-mail from October 11th 2012 at
11 1:15 p.m. again, please.

12 A Okay. I will draw up a document, but will send some
13 funds right now.

14 Q And what was your response to that?

15 A Not sure my account is set up with Retrophin. Probably
16 needs to be a check.

17 Q And when you wrote not sure my account is set up with
18 Retrophin. What did you mean?

19 A Direct deposit.

20 Q And what do you mean direct deposit?

21 A I had a direct deposit set up with MSMB, but I didn't
22 have any other direct deposit. And if he was going to send me
23 money, that's why I said it's going to have to be a check.

24 Q And what was Mr. Shkreli's response?

25 A Just put it on your desk.

Pierotti - direct - Pitluck

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1 Q And did you receive the other three severance payments
2 following that?

3 A I did.

4 Q Now, at that point in time, in October of 2012, did you
5 know if Retrophin was a public or a private company?

6 A It was private.

7 Q Now, there was a reference in that last e-mail to drawing
8 up a document.

9 Did you ultimately sign a document formalizing your
10 termination from MSMB Consumer?

11 A Yes.

12 Q And who asked you to sign that document?

13 A Martin.

14 Q Who gave you the document?

15 A Martin.

16 Q You know who drafted the document?

17 A I don't.

18 MR. PITLUCK: I'd like to show you Government's
19 Exhibit 112-10 for identification. It's tab ten in your
20 binder.

21 THE WITNESS: Got it.

22 Q Do you recognize this document?

23 A I do.

24 Q And is that your -- can you flip to the last page.

25 That's your signature at the bottom?

Pierotti - direct - Pitluck

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1 A Yes, it is.

2 MR. PITLUCK: Your Honor, we offer Government's
3 Exhibit 112-10 into evidence.

4 MR. DUBIN: No objection.

5 THE COURT: We receive Government's Exhibit 112-10.

6 (Government's Exhibit 112-10 received in evidence.)

7 (Exhibit published to jury.)

8 BY MR. PITLUCK:

9 Q What's the date of this agreement?

10 A November 12th, 2012.

11 Q And the letterhead at the top, what agreement -- excuse
12 me, what entity is providing this agreement?

13 A MSMB Healthcare Management LLC.

14 Q And the re line is termination of employment and release?

15 A Yes.

16 Q Can you read the top paragraph please.

17 A This agreement and release will confirm the termination
18 of your employment with MSMB Healthcare Management LLC and
19 Retrophin. Your signature, at the end of this agreement, will
20 signify your acceptance of and agreement to the provisions set
21 forth herein.

22 Q At the time that you got this agreement, did you notice
23 it had MSMB and Retrophin on it?

24 A Not that I recall, no.

25 Q Would it have mattered to you?

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1 A I probably still would have signed it, but I never worked
2 for Retrophin.

3 Q Now, going down to the first paragraph it says
4 termination of employment. Your employment with MSMB and
5 Retrophin terminated as of the close of business on
6 November 12th, 2012, the effective date, regardless of whether
7 you fail to sign or sign and later revoke this agreement.

8 Do you see that?

9 A Yes.

10 Q Then the next paragraph is payment.

11 And can you just read A there.

12 A You acknowledge receipt of \$20,000 as a one-time
13 severance payment. All payment shall be subject to
14 withholding for all applicable taxes.

15 Q And is that the \$20,000 severance payment that you
16 discussed a moment ago?

17 A Yes, sir.

18 Q Finally, can you read on this page, can you read the
19 first two sentences of paragraph 2C.

20 A You acknowledge and agree that upon your receipt of the
21 severance payment, neither MSMB nor Retrophin will owe you any
22 additional compensation of any nature, including, without
23 limitation, salary, bonus, commissions, accrued vacation pay
24 or sick time.

25 Q Can you read the next one, too, please.

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1 A In addition, you acknowledge and agree that you forfeited
2 and surrendered to Retrophin all of your equity, including
3 vested and unvested performance units, and stock, other
4 ownership, and financial interests in Retrophin as of the
5 effective date, and that you are not entitled to any
6 compensation or other payments in connection therewith.

7 Q At the time you signed this agreement, did you know if
8 you had any equity in Retrophin?

9 A I didn't.

10 Q I think you testified a moment ago that you -- Martin
11 Shkreli had -- not a moment ago, before the break -- Martin
12 Shkreli had told you about some shares?

13 A Yes.

14 Q Do you know how many you had at that point?

15 A No.

16 Q Did it matter to you that you were agreeing to forfeit
17 them?

18 A No.

19 MR. PITLUCK: Now, let's go to page 3, paragraph 5.

20 Q Do you see that nondisparagement clause there?

21 A I do.

22 Q Can you read it please.

23 A You agree that at all times you will refrain from making
24 any statements, whether publicly or privately, to anyone,
25 including without limitation, to the press or the media, to

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1 current or prospective investors, in any fund or account
2 managed or advised by MSMB, or its affiliates, to future
3 employers or prospective employers, or to other market
4 participants, regarding MSMB or Retrophin, or any of their
5 respective affiliates, past or current officers, managers,
6 clients, investors or principals, including, without
7 limitation Martin Shkreli, which could be interpreted to
8 disparage, criticize, defame the business reputation, ethics
9 or integrity of any such person, or which could adversely
10 affect the business of any such person. This restriction
11 applies to both written and oral statements, as well as to
12 statements posted by you on the Internet, even if posted
13 anonymously.

14 It also applies to statements made by third-parties
15 at your request, or on your behalf. If you are asked to offer
16 an opinion on Retrophin, MSMB, or any of its related parties,
17 you will refrain from answering and may reference the
18 restriction this agreement places on you.

19 Q What do you interpret that to mean, Mr. Pierotti?

20 A I interpret it to mean that you're not allowed to talk to
21 anybody about MSMB or Retrophin.

22 Q And on your reading, does this section require anything
23 of Martin Shkreli?

24 A No.

25 Q Or MSMB?

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1 A No.

2 Q Or Retrophin?

3 A No, sir.

4 MR. PITLUCK: Let's go to the last page.

5 Q Is that your signature at the bottom?

6 A Yes, sir.

7 Q And what's the date?

8 A Nov 12, 2012.

9 Q Who signed on behalf of MSMB Healthcare Management and
10 Retrophin?

11 A Martin Shkreli.

12 Q Now, prior to this agreement, had you performed any work
13 for Retrophin?

14 A No.

15 Q Had you ever discussed working for Retrophin with Martin
16 Shkreli?

17 A No.

18 Q Had you ever considered working for Retrophin?

19 A No.

20 Q Why not?

21 A There was no role for me at Retrophin. Obviously, I'm a
22 just -- it's a biotech. I was a political science major from
23 Boston College.

24 Q Now, after you signed this termination agreement, did you
25 make any other agreement to work for Retrophin?

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5904

1 A No.

2 Q Did Martin Shkreli ever offer you a position at Retrophin
3 after you signed this agreement?

4 A No, sir.

5 Q Did you ever discuss the possibility of working at
6 Retrophin after signing this agreement?

7 A No.

8 Q What did you believe your relationship with Martin
9 Shkreli was going to be going forward, after you signed this
10 agreement?

11 A Nothing, unless we gave him some interest in Wentworth.

12 Q Now, other than the \$20,000 in severance payments, did
13 Martin Shkreli give you, personally, any money after you
14 signed the termination agreement?

15 A He did.

16 Q How much did he give you?

17 A As I recall, \$5,000.

18 Q Why did he give it to you?

19 A I don't know.

20 Q Did you need it at the time?

21 A I did.

22 Q And after you signed the -- withdrawn.

23 After you signed the termination agreement, what did
24 you plan to do for employment?

25 A I planned to work at Garreco.

Pierotti - direct - Pitluck

5905

1 Q With Marek Biestek?

2 A Yes.

3 Q And after you signed that agreement, November 2012, did
4 you have an actual place to work?

5 A No.

6 Q Where -- were you able to work anywhere?

7 A Was I able to?

8 Q Were you able to stay in Retrophin's offices?

9 A Oh, no.

10 Q Why not?

11 A Martin had told Marek and I we needed to be out of those
12 offices, and I didn't -- it made all the sense for us not to
13 be in those offices.

14 Q Did Martin Shkreli tell you why you and Marek needed to
15 move out of Retrophin?

16 A Yeah, he was going to need it for Retrophin people.

17 Q What was your understanding of what was going on at
18 Retrophin at this time in November 2012?

19 A They were trying to raise money still for a series A
20 round to fund the business.

21 Q What does that mean, raise the money for a series A
22 round?

23 A Series A is sort of the first step in raising money for a
24 small private company, in this case, kind of a concept
25 biotech.

Pierotti - direct - Pitluck

5906

1 Q And after you signed your termination agreement
2 November 2012, who were the other people who were, in your
3 mind, working at Retrophin?

4 A Who was still working at Retrophin? Martin, his sister,
5 Steve Aselage, George Huang, Andy Vaino, Chris James was gone
6 by that time. That's about it.

7 Q Now, did there come a time when there was a plan to
8 take -- when you learned of a plan to take Retrophin public?

9 A Yes.

10 Q What was your understanding of how Retrophin was going to
11 become a public company?

12 A They were going to buy a public shell company and do
13 what's called a reverse merger.

14 MR. DUBIN: Objection. Based on hearsay,
15 Your Honor.

16 THE COURT: Were you still --

17 Q Were you still in the office at this time when you
18 learned this?

19 A Occasionally. But not consistently, but occasionally.

20 MR. PITLUCK: Your Honor --

21 THE COURT: Why don't you follow up with a different
22 question so you do not draw the same objection.

23 Q How did you learn of the plan to take Retrophin public
24 through a reverse merger?

25 A I can't say I remember exactly. I can't say I remember

Pierotti - direct - Pitluck

5907

1 who told me first.

2 Q But as of November 2012, that was your understanding?

3 A Yes.

4 MR. DUBIN: I object, Your Honor.

5 THE COURT: All right. Well, I will sustain the
6 objection.

7 Q Now, did there come a time that you learned how the --
8 how a reverse merger was going to work?

9 MR. DUBIN: I object, Your Honor. Same objection.

10 MR. PITLUCK: Your Honor, could we have a brief
11 side-bar.

12 THE COURT: All right. Better be brief because we
13 are ending at 4:30.

14

15 (Continued on following page.)

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25

Pierotti - direct - Pitluck

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1 (Sidebar.)

2 MR. PITLUCK: Your Honor, this is not --.

3 MR. DUBIN: It was my objection.

4 MR. PITLUCK: I'm sorry.

5 MR. DUBIN: I just wanted to state the basis of it.

6 There is no foundation for his knowledge other than hearsay.

7 They ran into this same exact problem when he testified at the
8 prior trial. He has no basis for this knowledge at all other
9 than allegedly hearing it from others.

10 MR. PITLUCK: It's not being offered for the truth.
11 It's being offered for what he did next, which is being
12 offered and purchasing starters Desert Gateway the shell
13 company.

14 THE COURT: Who offered?

15 MR. PITLUCK: We're going to get to that. Looking
16 at the clock, it's a whole other line of questioning and this
17 is not being offered for the truth of. There have been
18 fourteen witnesses who testified that there was a reverse
19 merger. It's based on his understanding of being in the
20 office and why he was able to and jumped on the opportunity to
21 purchase shares in Desert Gateway.

22 MR. DUBIN: That doesn't obviate the need for a
23 foundation for the testimony.

24 THE COURT: If you get to that point, you can elicit
25 the background of the offer and who offered him the

Pierotti - direct - Pitluck

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1 opportunity and I don't know who was the person.

2 MR. PITLUCK: Mr. Shkreli offered him. If you ask
3 him did there come a time when you bought shares in Desert
4 Gateway.

5 THE COURT: And who offered you the opportunity.

6 MR. PITLUCK: Then you have to go back all the way.

7 THE COURT: And what were you told. That is what he
8 you to do.

9 MR. PITLUCK: He learned of it much earlier. It's
10 not being offered for the truth of the fact that there was a
11 reverse merger because that's been established as recently as
12 a hour ago.

13 THE COURT: If Martin Shkreli was the person who
14 told him about the reverse merger maybe you could get to the
15 point in time when that occurred.

16 MR. PITLUCK: When Martin Shkreli told him about the
17 reverse merger and the opportunity to buy shares he already
18 knew about it. He didn't sit down and explain.

19 THE COURT: He told you said Martin Shkreli was the
20 one who told him about the reverse merger.

21 MR. PITLUCK: Martin Shkreli was the person who gave
22 the opportunity to buy the shares. When he had that
23 opportunity he already knew about the reverse merger. This
24 came up in Mr. Shkreli's trial. It's not being offered for
25 the truth. So I don't know --

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1 THE COURT: Just to show --

2 MR. PITLUCK: To show what happened, why he did what
3 he did. He's offered for background which is a totally proper
4 basis for the hearsay testimony. It's offered for what he did
5 next. It's framing for the jury. He's not going to testify
6 about being an expert in a shell company, just his
7 understanding of what was going on in the office and why he
8 was offered that opportunity.

9 MR. DUBIN: Your Honor, I think that your questions
10 get to what my concern is. My concern is that what he hears
11 going on in the office quote unquote is going to be based on
12 hearsay and it is critically important to us that if he's told
13 by Martin Shkreli that he has the opportunity to buy shares I
14 wouldn't object. There's no foundation for his knowledge as
15 to there being a reverse merger other than hearsay. He has
16 not laid any foundation.

17 THE COURT: What I was thinking is he's in a small
18 office, he's sitting directly across the desk from Mr. Shkreli
19 and Mr. Shkreli -- I didn't know whether he was the source.
20 He couldn't remember whether Mr. Shkreli was the one who told
21 him about the reverse merger. I don't know that.

22 MR. DUBIN: At that time they had moved offices.
23 They were not in that little shoe box office. They moved into
24 other offices where there were big offices. If Mr. Shkreli
25 told him about the reverse merger that's information for this

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1 jury to have. I don't want them left with a misimpression
2 this was general knowledge floating around the office and
3 being blurted out. That's the misimpression the jury will
4 get, by him saying I knew there was a reverse merger without
5 laying a foundation for the basis of his knowledge.

6 THE COURT: So he left sometime in November.

7 MR. PITLUCK: Judge, I think we have to let the jury
8 go. This whole line of questioning will take longer than five
9 minutes.

10 MR. KESSLER: The entire point is it's not being
11 offered for the truth of the matter. No one is going to argue
12 that there was a reverse merger because Tim Pierotti testified
13 there was a reverse merger. That is the only hearsay concern
14 and it's not being implicated here.

15 THE COURT: They want you to adhere to hearsay
16 rules. Let's let the jury go. Now it's twenty-five after the
17 hour and we can straighten this out.

18 MR. DUBIN: Mr. Pierotti is standing up and trying
19 to listen into the conversation.

20 MR. PITLUCK: He's not listening to the
21 conversation.

22 MR. DUBIN: I don't know what he's doing.

23 MR. PITLUCK: I think he's standing up stretching.

24 THE COURT: I'm going to excuse the jury and I'll
25 excuse Mr. Pierotti.

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1 (In open court.)

2 THE COURT: Members of the jury, I'm going to
3 dismiss you now because we have some issues to discuss. I
4 want to thank you again for your attention. Don't discuss the
5 case at all. Report back to us on Monday. Don't read about
6 the case and thank you for your service. Have a pleasant
7 weekend.

8 (Jury excused.)

9 THE COURT: Mr. Pierotti, you can step down and you
10 are excused for the day. We will see you Monday morning at
11 nine.

12 THE WITNESS: Nine?

13 THE COURT: At nine, yes.

14 (Witness excused.)

15 THE COURT: Come up, please.

16 MR. DUBIN: Your Honor, it is four minutes prior to
17 when we're going to break. The reason we're breaking is
18 Mr. Greebel is an Sabbath observer and needs to leave. Can we
19 take this up first thing Monday morning.

20 THE COURT: Can we resolve this now in four minutes?
21 I promised he can leave at 4:30. We've been through this and
22 I guess my question was whether the knowledge of this witness
23 about reverse merger was gleaned from Mr. Shkreli's comments
24 about the reverse merger.

25 MR. PITLUCK: Judge, I think the point, I have

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1 obviously reviewed the transcript of the last trial too and we
2 tried to make sure the testimony adhered to the hearsay rules
3 which is obviously a statement offered for its truth, an out
4 of court statement offered for its truth. Mr. Pierotti had
5 knowledge that he obtained through the office. He doesn't
6 remember specifically where it's from, that there was a
7 reverse merger going on, that it would be done through a shell
8 company and that there would be -- Retrophin would become a
9 public company after that and it's in that context which he is
10 offered the opportunity to purchase shares.

11 So we are not -- this is not testimony that's being
12 offered for its truth that a reverse merger was in fact going
13 on. It's offered for Mr. Pierotti's state of mind as he's
14 offered this opportunity and the days and weeks leading up to
15 the opportunity. There is no hearsay issue because we are not
16 going to argue you heard about the reverse merger, that there
17 was -- that it was being talked about in the offices because
18 Tim Pierotti told you that, it's simply that Tim Pierotti had
19 knowledge. That's our only point. We should be entitled to
20 elicit that to provide the jury with the necessary background
21 and Mr. Pierotti's state of knowledge at the time these shares
22 were offered to him. That is it.

23 THE COURT: Mr. Dubin, do you have anything else to
24 add to your argument that this is hearsay?

25 MR. DUBIN: Yes. I think it does not obviate the

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1 need for them to lay a foundation. They are trying to back
2 door their hearsay problem by saying he just generally
3 learned. If Martin Shkreli is the one that told him, let him
4 ask that. If he doesn't remember, he doesn't remember. You
5 can't just get knowledge from nowhere. There has to be basis
6 for it. They have to lay a foundation.

7 THE COURT: I'm going to propose, if this comes out,
8 that you ask this witness at the time he was offered shares
9 what he knew about -- what did Mr. Shkreli tell him about the
10 opportunity to buy the shares, and I would think that it would
11 come up in a conversation about a reverse merger, that had
12 happened or was about to happen; is that correct?

13 MR. PITLUCK: No, your Honor. It's different than
14 that. Mr. Pierotti's understanding was that he knew about it.
15 So when he offered that it was not Mr. Shkreli sitting him
16 down and explaining a reverse merger. It was a very different
17 conversation from that. I can say -- I can do it in reverse
18 order. It's confusing and it's much clearer for him to say
19 that he learned this and knew it prior to that opportunity.

20 MR. DUBIN: It's the how that's critically important
21 and it is important because if you read it somewhere and I
22 think that there's a real good chance he did, in a
23 communication he received or somewhere else, but if that's the
24 case, let him ask. It's the how that's important and they are
25 trying to get around the how he learned. You can't just get

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1 knowledge from nowhere. There has to be a foundation laid
2 that forms the basis of his knowledge.

3 MR. PITLUCK: It's not being offered for the truth.
4 It's offered for his state of mind.

5 MR. DUBIN: Hearsay or not you can't just testify to
6 things you became aware of. There has to be a how you became
7 aware of it.

8 MR. PITLUCK: Sure you can. He's not attributing a
9 source. He's not saying Kevin Mulleady told me about this. I
10 remember it and then we would offer it for its truth. This is
11 simply related to his state of mind. He testified very
12 clearly that he was in the office occasionally and he heard it
13 there. So there's no hearsay, your Honor.

14 THE COURT: They are not offering it for its truth.
15 There's an abundance of evidence that has come in prior to
16 this testimony that there was a reverse merger with Desert
17 Gateway and certain transactions occurred as part of that
18 transaction, including the offering of certain shares to
19 certain individuals. We heard that from Mr. Su. We heard it
20 from many people.

21 To the extent it's not being offered for its truth,
22 but rather what is Mr. Pierotti's state of mind, what does he
23 understand at the time he's being offered this opportunity to
24 buy Fearnow shares, I think it would be an appropriate way to
25 admit evidence of Mr. Pierotti's understanding and state of

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1 mind.

2 MR. DUBIN: If we could have this consistent with
3 prior situations like this throughout the trial, instruct the
4 jury, inform the jury that it's not being offered for the
5 truth.

6 THE COURT: I will say it's being offered to explain
7 Mr. Pierotti's state of mind and understanding.

8 MR. DUBIN: Perfect. Thank you, your Honor.

9 MR. PITLUCK: Obviously, we want to move on. There
10 are instances going forward in which things are not being
11 offered for the truth where we may seek the same objection
12 because it's important for the same reasons.

13 THE COURT: We will certainly try to be even-handed
14 to both sides.

15 MR. PITLUCK: Thank you, your Honor.

16 THE COURT: Have a nice weekend.

17 MS. DENERSTEIN: Your Honor, can we get the witness
18 list for next week and know if things changed?

19 MR. PITLUCK: We've got to confer and consult.

20 MS. DENERSTEIN: It's Friday. Usually we get it
21 Thursday.

22 MR. PITLUCK: Usually you get it Thursday because we
23 are not sitting on Friday. We have to consult Mr. Pierotti's
24 travel schedule.

25 MR. MASTRO: I'm waiting for Mr. Geller. I am all

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1 suited up.

2 THE COURT: This can't be on the record, if you guys
3 are all talking at once.

4 So can we go off the record then. Thank you.

5 Have a good weekend.

6 (Case adjourned to Monday, November 20, 2017 at 9:00
7 a.m.)

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1 I N D E X

2 WITNESSES:

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4 DEBORAH OREMLAND, resumed.

5 DIRECT EXAMINATION 5714

6 CROSS-EXAMINATION 5764

7 REDIRECT EXAMINATION 5835

8 RECROSS-EXAMINATION 5839

9 TIMOTHY JOSEPH PIEROTTI

10 DIRECT EXAMINATION 5841

11

12

13 EXHIBITS:

14

15 GX 960, 962 and 964 5717

DX 13085 5804

16 GX 112-1 5856

GX 112-35 5864

17 GX 112-36 5882

GX 112-32 5887

18 GX 112-4 5892

GX 112-5 5895

19 GX 112-10 5899

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